

BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
AVALON EDUCATION GROUP, INC., LC

Petitioner

Melanie Hennigan

Richard McPherson

Stephen G. Petersen

Paul Sun

For the Petition

Jody Kline, Esquire

Attorney for the Petitioner

* * * * *

Martin Klauber, Esquire

The People's Counsel

Neither In support Nor In Opposition

to the Petition

* * * * *

Patricia A. McKenzie

Paul McKenzie

In Opposition to the Petition

* * * * *

Board of Appeals Case No. S-2685
(OZAH Referral No. 07-11)

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Petition S-2685, filed September 25, 2006, requests a special exception under Section 59-G-2.19 for a private educational institution, to be constructed on property located at 22821 and 22901 Frederick Road in Clarksburg, Maryland, in the R-200 Zone, known as Parcels P770, P765 and P801, Tax Map EW41, Tax Account Nos. 02-00019098, 02-00019076 and 02-00019087. Petitioner, Avalon Education Group, Inc., currently operates a school known as The Avalon School in leased space, and has purchased the subject property with the intent of building a new facility for The Avalon School at this location.

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the present petition and, in a report dated February 15, 2007, recommended approval with conditions.¹ See Ex. 31. Staff submitted supplemental information, responding to questions from the Hearing Examiner, on March 28 and 29, 2007. See Ex. 37. The Montgomery County Planning Board ("Planning Board") considered this petition on March 15, 2007 and voted 5 to 0 to recommend approval with substantially the same conditions recommended by Staff. See Ex. 35.

On November 6, 2006 the Board of Appeals scheduled a public hearing in this matter for February 9, 2007, to be conducted by a hearing examiner from the Office of Zoning and Administrative Hearings. The hearing was later postponed to allow additional time for Technical Staff to present their recommendations to the Planning Board, and was rescheduled to March 12 and then March 30, 2007. The public hearing was convened after proper notice on March 30, 2007, at which time testimony and other evidence were received in support of and in opposition to the proposed special exception. The record was held open to permit additional submissions by the Petitioner and allow time for public comment, and was later extended, at Petitioner's request, to allow additional time for Petitioner to make its submissions and to provide a comment period. The record ultimately closed on May 29, 2007.

II. BACKGROUND

For the convenience of the reader, background information is grouped by subject matter.

¹ The Staff Report has been liberally paraphrased and quoted in Part II of this report.

A. The Subject Property and Neighborhood

The subject property consists of approximately 9.68 acres in three parcels, which the Petitioner intends to combine through re-subdivision if the special exception is granted. The site is on the east side of Frederick Road (MD Rte. 355) in Clarksburg, just north of Shawnee Lane and about one mile from the Clarksburg Town Center. Its general location may be seen on the map below.

Location Map, excerpted from Ex. 57(i)



The subject property is irregular in shape, about 600 feet deep, with approximately 747 feet of frontage on Frederick Road. It is classified under the R-200 Zone and is developed with a single-family detached home with a small, looped driveway and a greenhouse². There is a small grassy area between the two structures, and the site has scattered trees and shrubs, including five specimen trees, but as seen in the aerial photograph on the next page, much of it has little vegetation. There is no existing forest. The site slopes upward about 50 feet from the rear of the property to its Frederick Road frontage.

² The site contains two structures. One faces MD 355 and is undisputedly a single-family home. The other sits farther back from the road. It was described as a single-family structure by Technical Staff, and as a greenhouse by Petitioner's landscape architect.

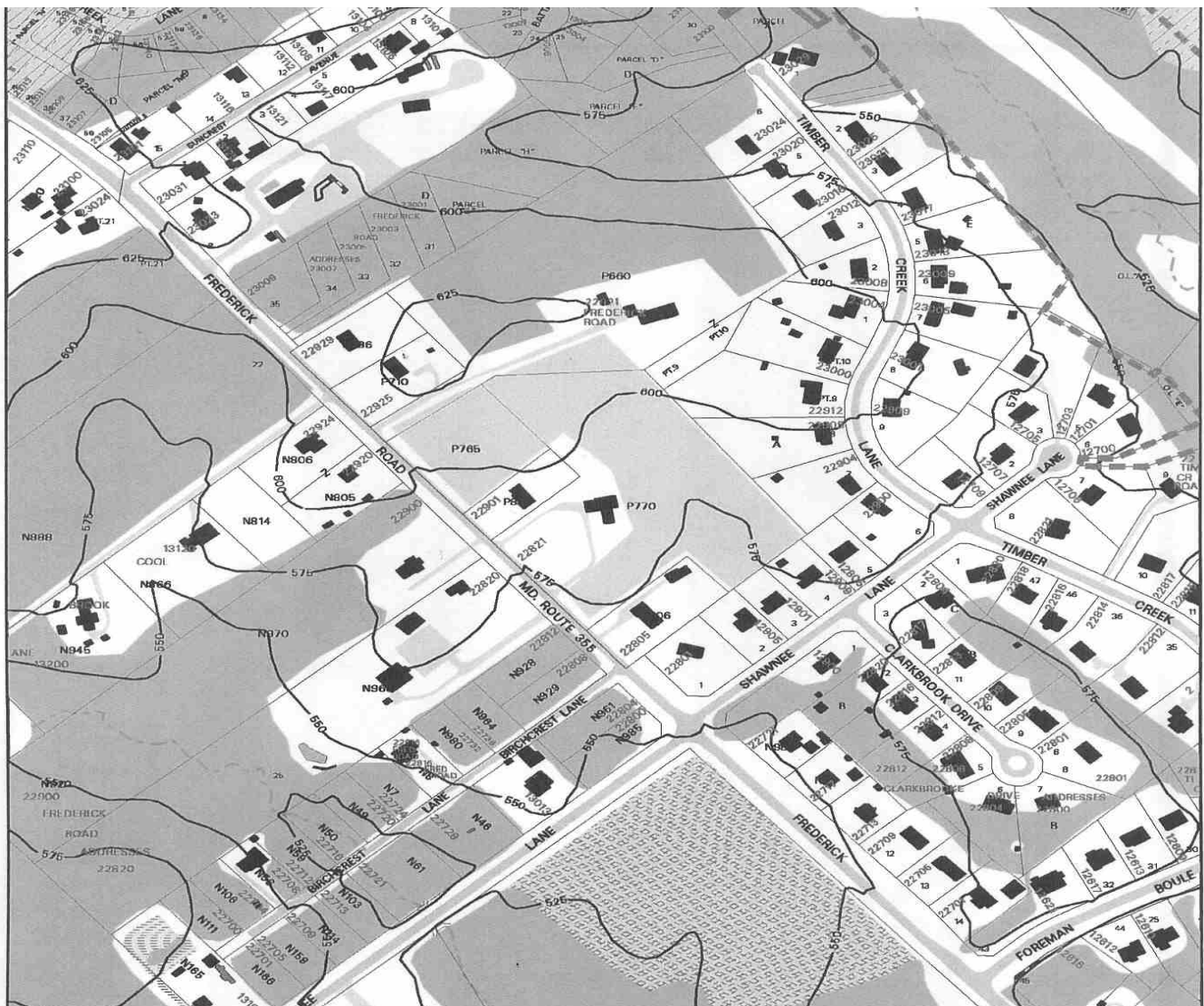
Existing Conditions Aerial Photo, Excerpted from Staff Report Attachment 4

The subject site abuts single-family detached homes in the R-200 Zone on three sides. Across MD 355, it confronts single-family homes and a church, also in the R-200 Zone. The relationship of the subject property to abutting and confronting land uses may be seen on the vicinity map on the next page.

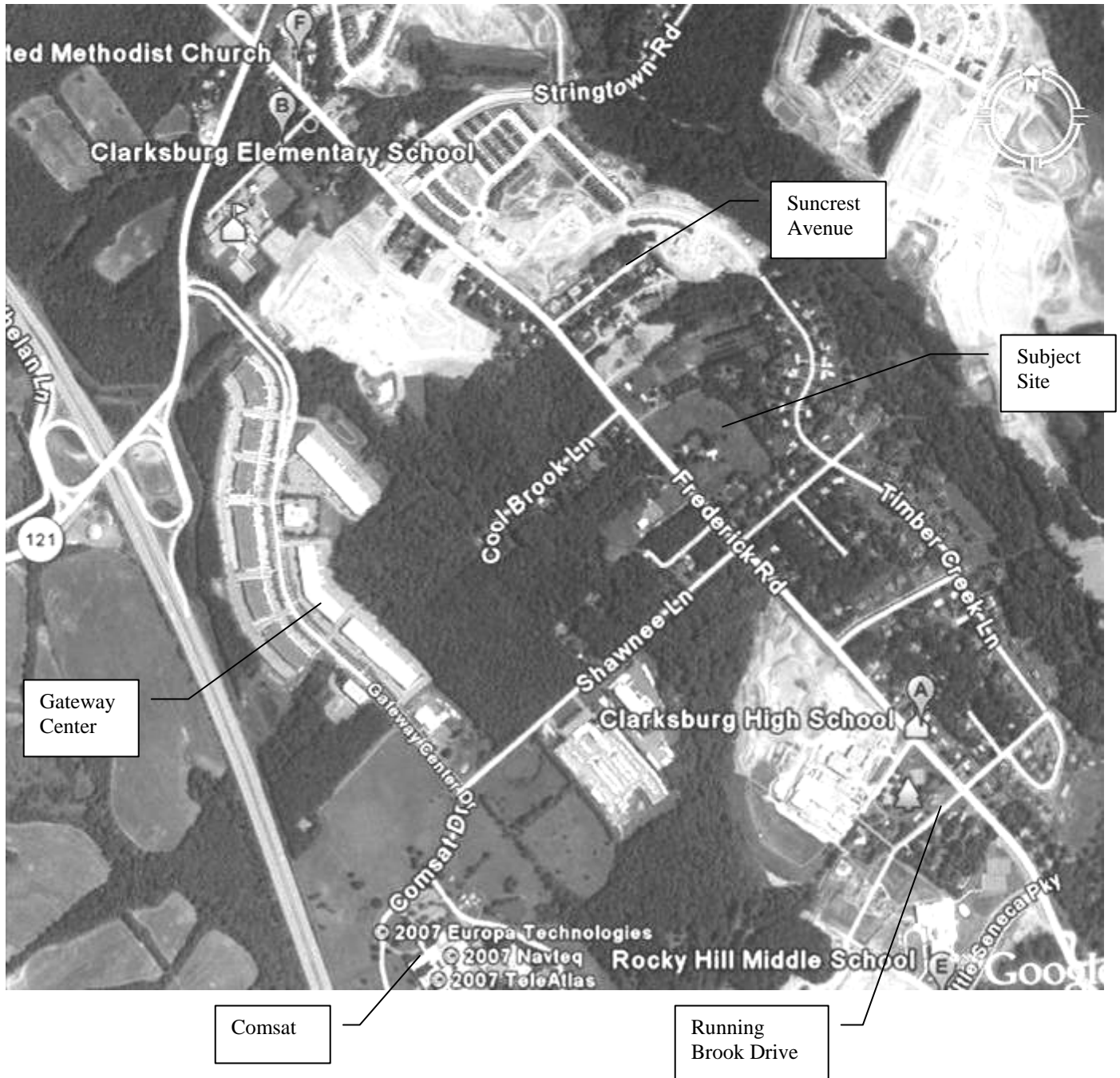
Technical Staff suggests that the “extended” neighborhood for this case includes properties fronting on MD 355 between Little Seneca Parkway to the south and Stringtown Road to the north, as well as properties west of Timber Creek Lane and east of the Gateway Business Center and COMSAT. As shown in the aerial photograph below, this area is broad, extending far beyond the land uses that would be within sight or sound of the proposed special exception. It is possible that some traffic impacts could extend far enough to have a modest impact in the farther portions of this “extended” neighborhood. The extended neighborhood includes single-family detached homes, three public schools, two churches and an industrial/business area. For purposes of assessing the likely

impacts of the proposed use on the general neighborhood of the site, the Hearing Examiner considers it more appropriate to focus on the area between Suncrest Avenue to the north and Clarksburg High School to the south, and between Timber Creek Lane to the east and properties fronting on MD 355 to the west. This general neighborhood contains single-family detached homes, one public school and one church. One existing special exception has been identified in the general neighborhood: a horticultural nursery and commercial greenhouse, The Green Gardens Nursery, which is located slightly north of the subject property, east of MD 355, and was approved in 1977. A second special exception was recently approved in the "extended neighborhood": Bennet Creek Animal Hospital and Boarding Facility, located south of Running Brook Drive on the two-acre Walcoff property.

Vicinity Map, Excerpted from Staff Report Attachment 3



Aerial Photograph of Neighborhood from Google Earth³



B. Master Plan

The subject property is in the area covered by the *Clarksburg Master Plan* (the “Master Plan”), which is silent on the issue of special exception uses for the subject site. The site is located

³ The Hearing Examiner downloaded the aerial photograph above from Google Earth because the record lacked a map showing the entire “extended neighborhood” referenced by Technical Staff. The Hearing Examiner hereby takes official notice of Google Earth’s widely accepted mapping capabilities.

within the Master Plan's Transit Corridor District. The Master Plan includes the following description of this area and its central planning challenge:

The Transit Corridor District includes properties fronting on MD 355 which have developed over many decades in accord with traditional patterns found elsewhere in the Up-County: single-family detached lots fronting the road. The most significant planning challenge in the Transit Corridor District is to maintain and continue this residential character while addressing the need for increased traffic capacity along MD 355.

Master Plan, as quoted in Community-Based Planning memorandum of February 13, 2007, attached to Staff Report ("Community-Based Planning Memo").

The Master Plan also lists several objectives for this area:

- Continue the present residential character along MD 355.
- Balance the need for increased carrying capacity along portions of MD 355 with the desire to retain a residential character along MD 355.
- Continue the present employment uses along I-270.
- Provide housing at designated areas along the transitway near significant employment uses.
- Allow small amounts of office and retail use at transit stop areas as part of a mixed-use development pattern.
- Establish strong pedestrian and bicycle linkages to the greenway.
- Improve east-west roadway connections.
- Provide an open space system, which includes small civic spaces at the transit stops.

Master Plan at 54-58, as quoted in Community-Based Planning Memo at 2.

Community-Based Planning Staff concludes that the proposed use "would not adversely affect the recommendation of the Master Plan." Community-Based Planning Memo at 4. Staff notes that the Master Plan supports R-200 zoning for the property, under which a school is a permitted special exception use. Staff opines that the proposed school, arranged in a "U" shape to create a classic academic quadrangle, would be compatible with the surrounding neighborhood for several reasons: the size, scale and scope of the school would be mitigated by architectural features designed to relieve the mass of the buildings and imply a residential character; the windows would be residential

in scale and rectangular in shape, rather than arched, as originally proposed; and other architectural features, such as pitched roofs and red brick, are compatible with existing uses in the neighborhood.

Community-Based Planning Staff specifically recommends that the following “guideline” be met before the special exception is approved, to comply with the Clarksburg Streetscape Plan:

Provide high-mount lighting, Cobra on decorative poles. The lighting plan should provide for the safety of pedestrians and motorists and that will [sic] ensure no glare or reflection into nearby residential properties.

Community-Based Planning Memo at 4.

This recommendation was neither carried forward into the body of the Staff Report nor explained in response to a question from the Hearing Examiner. See Ex. 37. None of the Petitioner’s witnesses was able to explain what “high-mount lighting, Cobra on decorative poles” means, although Petitioner’s counsel, Jody Kline, suggested that the term “cobra” refers to arced light poles for street lighting. See Tr. at 207. It appears that this recommendation pertains to off-site lighting within the future public right-of-way, which is not typically addressed by the Board of Appeals. Nonetheless, it is the only specific recommendation from Technical Staff pertaining to Master Plan compliance, and street lighting can have a significant effect on compatibility with surrounding uses. For these reasons, the Hearing Examiner has recommended substantial compliance with the Clarksburg Streetscape Plan in connection with street lighting as a condition of approval.

C. Proposed Use

The Petitioner proposes to construct a new facility to house its private school for boys, grades three through 12, called The Avalon School. The school is currently operating in space leased from Montgomery County, and has approximately 237 students. The school will be obligated to leave its leased space in the latter part of 2008, and hopes to have its new facility built by that time. Petitioner expects to open at its new location with approximately 300 students, and aims for a maximum enrollment of 600. Faculty and other staff are expected to grow to a total of no more than 70 employees at full enrollment. Enrollment at the school has doubled in size in the four years since the

school was founded, and Petitioner's plans anticipate full enrollment by the 2011-2012 academic year. See Tr. at 51; Ex. 57(k) at 1.

Classes would operate from late August to early June, starting at 8:50 a.m. and ending at 3:15 p.m. The school would be open for student arrival at 7:30 a.m. After classes end, students would be permitted to stay on campus as late as 6:00 p.m. to study or seek extra help in the library or a classroom, to participate in supervised play in the gymnasium, or to participate in organized activities such as clubs, sports and a school newspaper. More than half of The Avalon School's students are currently driven to school by faculty members in school vans, and the school hopes to continue this practice at the proposed new location. The record is less clear with regard to van usage after school, because departures are more staggered than arrivals.

Petitioner proposes to offer summer camp programs at the subject site for a maximum of 200 boys, from 9:00 a.m. to 3:00 p.m. Monday through Friday, with the same maximum number of staff and faculty as during the school year. Camp programs would be open to the community as well as to Avalon students.

Four buildings are currently proposed to house The Avalon School at the subject site: a classroom building, an administration building with a library and chapel, a dining hall with a stage, and a gymnasium.⁴ As shown on the plan below, three of the buildings are proposed to be arranged in a "U" shape, with the gymnasium off to one side. Parking is arranged in small parking areas along a roughly semi-circular drive wrapping around the buildings, avoiding the visual impression of a large parking lot. The "Impervious Area Plan" is shown first because it offers the clearest visual presentation of Petitioner's plan for the site. The Site Plan and building elevations follow.

⁴ The classroom building is described on the architectural drawings and was referred to in some of the testimony as the "Upper School" building, consistent with an earlier plan to have separate upper school and lower school buildings.



Impervious Area Drawing, Notes, from Ex. 50(

GENERAL NOTES:

1. BOUNDARY INFORMATION IS PROVIDED BY PATTON HARRIS RUST & ASSOCIATES, INC.
2. TOPOGRAPHY INFORMATION PROVIDED BY PATTON HARRIS RUST & ASSOCIATES, INC.
3. PROPERTY IS ZONED R-200.
4. GROSS TRACT AREA IS 10.29 ACRES.
5. TAX MAP EW41, PARCEL P770, P765, P801.
6. IMPERVIOUS AREA MAY BE ADJUSTED PENDING FINAL DESIGN OF STATE HIGHWAY IMPROVEMENTS AND AVAILABILITY OF RIGHT OF WAY FROM ADJACENT OWNERS.




IMPERVIOUS AREA CALCULATIONS:

1.	UPPER CLASSROOM	14,522 S.F.
2.	LIBRARY / CHAPEL / ADMIN.	18,701 S.F.
3.	DINING HALL	10,746 S.F.
4.	GYM	12,842 S.F.
5.	ROADS, DRIVE AISLES AND PARKING	53,108 S.F.
6.	SIDEWALKS,	18,308 S.F.
7.	ADJACENT OFF SITE IMPROVEMENTS	<u>9,351 S.F.</u>
TOTAL		137,578 S.F.

TOTAL DEVELOPMENT AREA

GROSS TRACT AREA	10.29 ACRES OR 448,232 S.F.
ADDITIONAL DISTURBED AREA.	
WORK ALONG FRONTAGE	6,969.6 S.F.
OFF SITE IMPROVEMENTS	20,194 S.F.
OFFSITE SEWER EASEMENT	<u>3,920 S.F.</u>
TOTAL DEVELOPMENT AREA	479,316.40 S.F.
TOTAL IMPERVIOUS AREA	137,578 / 479,319 28.7%

LEGEND

	PROPOSED BUILDING
	PROPOSED SIDEWALK, AND SIDEWALK IF R.O.W. AVAILABLE
	PROPOSED PAVED AREA AND PAVED R.O.W. IF AVAILABLE

Site Plan General Notes, from Ex. 57(i)**GENERAL NOTES:**

1. BOUNDARY INFORMATION IS PROVIDED BY PATTON HARRIS RUST & ASSOCIATES, INC.
2. TOPOGRAPHY INFORMATION PROVIDED BY PATTON HARRIS RUST & ASSOCIATES, INC. CONTOUR INTERVAL=2'.
3. TAX MAP EW41, PARCEL P770, P765, P801.
4. THERE ARE NO KNOWN RARE, THREATENED, OR ENDANGERED SPECIES ON THIS SITE.
5. THERE ARE NO STREAMS, WETLANDS, OR FLOODPLAINS ON THIS SITE.
6. THIS PROPERTY HAS AN APPROVED NRI/FSD (4-06302).
7. THE PURPOSE OF THIS SPECIAL EXCEPTION IS TO BUILD A PRIVATE SCHOOL IN R-200 ZONE.
8. INFORMATION ON ADJACENT PROPERTIES IS FROM MARYLAND DEPARTMENT OF ASSESSMENT AND TAXATION ON-LINE DATA BASE.
9. BUILDING PHASE NUMBERS ARE SHOWN FOR IDENTIFICATION PURPOSES ONLY. CONSTRUCTION OF BUILDINGS MAY NOT BE IN CONSECUTIVE ORDER.
10. * DENOTES BUILDING FRONT FOR DETERMINATION OF BUILDING HEIGHT AS PER MONTGOMERY COUNTY ZONING ORDINANCE.
11. GRADING IN STATE RIGHT OF WAY SUBJECT TO FINAL APPROVALS FROM MD SHA AND AVAILABILITY OF RIGHTS OF WAY FROM ADJACENT OWNERS.

SITE TABULATIONS:

1. SITE AREA: 9.68± ACRES.
2. EXISTING ZONING: R-200.
3. EXISTING USE: RESIDENTIAL.
4. PROPOSED USE: PRIVATE SCHOOL.
5. BULK REGULATIONS:

Site Plan Development Standards Tabulations, from Ex. 57(i)

REQUIRED		PROVIDED	
SETBACKS		SETBACKS	
	FROM FREDERICK RD: 40'		FROM FREDERICK RD: 40'
	SIDE: 12' ONE SIDE, 25' BOTH SIDES		SIDE: 95± ON NORTH SIDE
			165± ON N/W SIDE 151± ON S/E SIDE, NEXT TO CLARKBROOK ESTATE
	REAR: 30'		REAR: 115±
LOT WIDTH:		LOT WIDTH:	
	100'		746.9±
LOT COVERAGE:		LOT COVERAGE:	
	MAXIMUM PERCENTAGE OF NET LOT AREA THAT MAY BE COVERED BY BUILDINGS, INCLUDING ACCESSORY BUILDINGS.		MAXIMUM PERCENTAGE OF NET LOT AREA THAT MAY BE COVERED BY BUILDINGS, INCLUDING ACCESSORY BUILDINGS.
	25%, (2.42± ACRES)		13.3% (1.29± ACRES)
BUILDING HEIGHT:		BUILDING HEIGHT:	
	50'		44' MAX.
PARKING REGULATION:		PARKING PROVIDED:	
	ONE PARKING SPACE FOR EACH EMPLOYEE, INCLUDING TEACHERS AND ADMINISTRATORS, PLUS SUFFICIENT OFF-STREET PARKING SPACE FOR THE SAFE AND CONVENIENT LOADING AND UNLOADING OF STUDENTS, PLUS ADDITIONAL FACILITIES FOR ALL STUDENT PARKING.		80 CAR SPACES PROVIDED. 2 MOTORCYCLE SPACES 4 BICYCLE RACKS

The proposed buildings would contain a total of about 94,000 square feet of space. The following information is available concerning the individual buildings (all numbers are approximate):

Classroom building	238 feet by 78 feet (shorter side facing street); 40 feet high; 28,000 square feet of space
Administration building	250 feet by 103 feet; 44 feet high plus tower/steeple under 60 feet; 30,000 square feet of space
Dining Hall	120 feet by 120 feet; 26 feet high; 11,000 square feet of space
Gymnasium	130 feet by 115 feet; 37 feet high; 25,000 square feet of space

The Petitioner's architect, Melanie Hennigan, testified that creating a series of buildings, instead of a single, very large building, would be more in keeping with the surrounding community. She noted that this also allowed the architects to arrange the buildings in a way that screened the parking, so that the main view of the campus from Frederick Road would be a large green lawn surrounded by buildings. Ms. Hennigan described the open lawn area as an amenity for the community, an "outdoor room" that brings life to the site and allows people to appreciate the beauty of the buildings. She noted that out of sensitivity to the immediate neighbors, all of the buildings were placed far away from the property lines, creating an ample buffer.

The buildings are proposed to be finished in brick, with stone bases and pitched, shingle roofs on the administration and classroom buildings. The gymnasium and dining hall would have a combination of shingle and metal roofing. Ms. Hennigan opined that the buildings would be architecturally compatible with the character of the surrounding community because of their heights, the shape of the gable ends, the shape of the roofs, the building proportions, the window proportions and the stone bases, all of which are residential elements the community would be very familiar with.

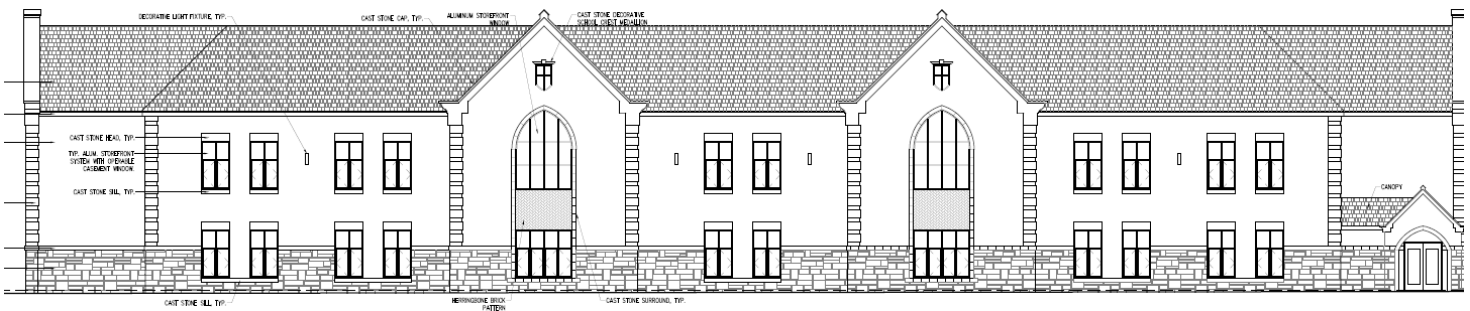
Examining the neighborhood context, Ms. Hennigan observed that Frederick Road has a mix of uses including residential architecture, large scale commercial development and community buildings such as churches and schools. Off of Frederick Road, she noted, are clusters of neighborhoods varying from 1960s contemporary architecture, to older neighborhoods, to new development farther north in the new town center area, which has a Craftsman-style aesthetic. Ms.

Hennigan stated that within a 10 to 20-miles radius of the subject site one finds a great deal of red brick, stone, and pitched roofs with shingles, all proposed for this project.

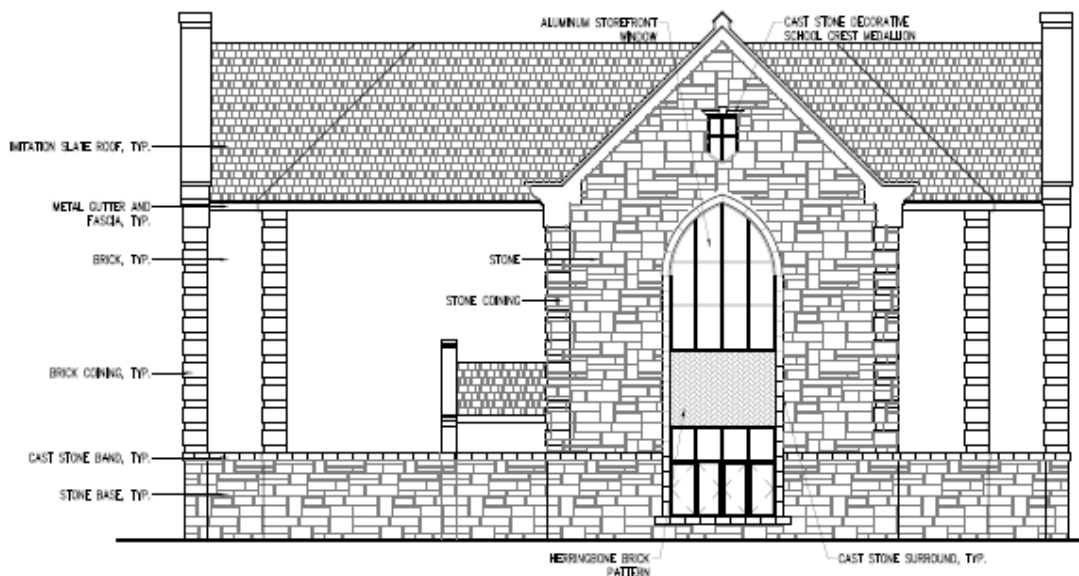
Comparing the size of the buildings proposed for this site with existing non-residential buildings in the neighborhood, Ms. Hennigan noted that because the school functions have been split up into four buildings, these buildings would be much smaller than the public schools in the area. She estimated that the church across the street is probably one and half to two times the size of the proposed gymnasium and dining hall, noting that it is not one of the larger churches in the area. Ms. Hennigan observed that many residences in the area are greater in length than the 78-foot width of the classroom building where it would face the street.

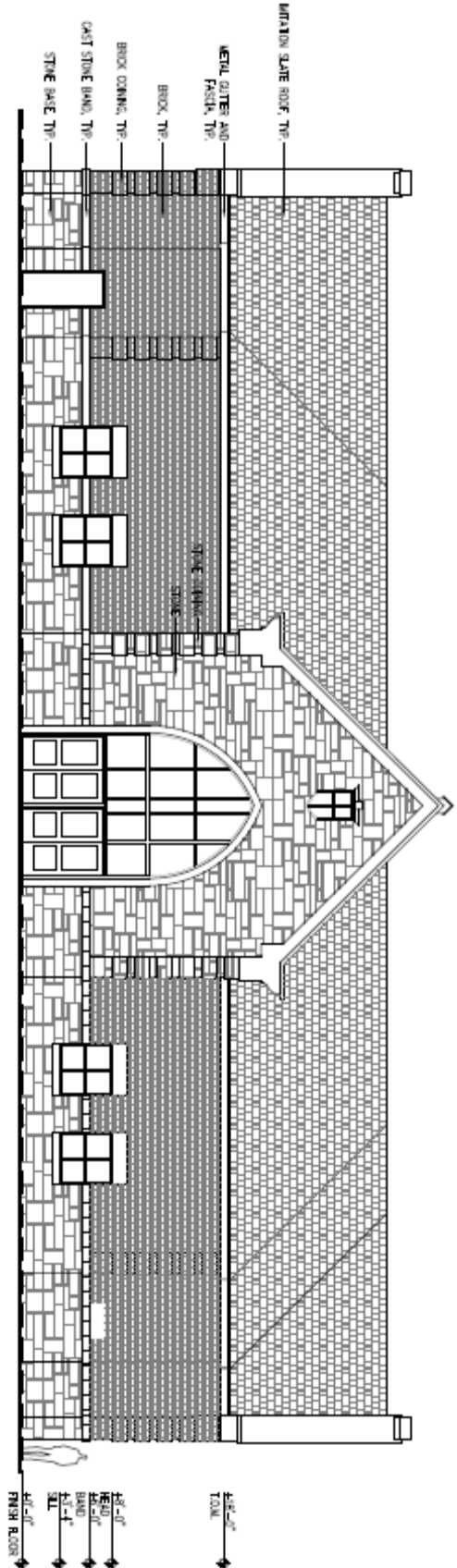
Elevations for the buildings proposed at the subject site follow.

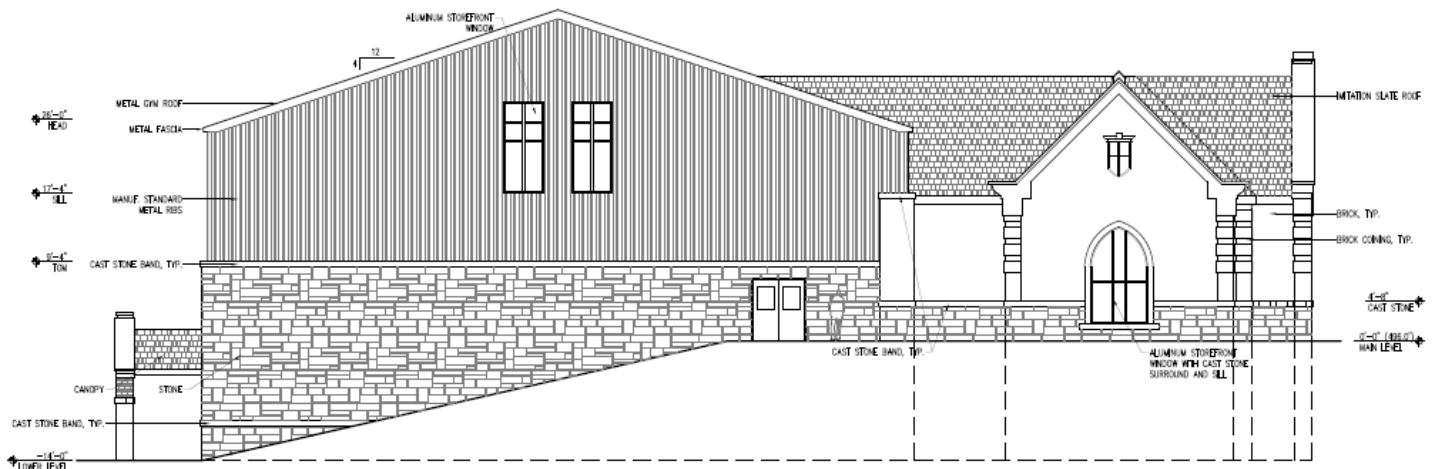
Upper School (Classroom) Building East Elevation, from Ex. 47(a)



Upper School (Classroom) Building South Elevation, Facing Rte. 355, from Ex. 47(a)





Gymnasium Entry Elevation, from Ex. 47(c)**Gymnasium Side Elevation, from Ex. 47(c)**

D. Parking

Section 59-E-3.7 of the Zoning Ordinance requires that a private educational institution provide one parking space for each employee, plus “sufficient off-street parking space for the safe and convenient loading and unloading of students,” plus additional facilities for student parking. In the present case, the proposed site plan provides for a total of 80 parking spaces in a series of small parking areas along the semi-circular driveway. This would be adequate for 70 staff members, but leaves little additional parking for students, some of whom would be driving age. This raises a potential concern about students parking on neighborhood streets. In addition to being an imposition on the

neighbors, parking on nearby streets could cause safety problems due to the lack of sidewalks along Rte. 355. The State Highway Administration ("SHA") would obligate Petitioner to construct sidewalks along its street frontage, but neighboring properties have already been developed without such an obligation. Transportation Planning Staff recommended that Petitioner construct a sidewalk from its property to the corner of Shawnee Lane, crossing two other privately-owned parcels. As discussed further under "Transportation," below, it appears unlikely that the Petitioner will be able to acquire an easement across the adjacent parcel for this purpose. Petitioner gave no indication that it is prepared to purchase the adjacent property, if it is available, to make safety improvements. Without sidewalks along Rte. 355, the evidence suggests that the safety of pedestrian access to the site is questionable. Thus, it is vital that no on-street parking be permitted. To this end, Mr. McPherson agreed to a condition that would prohibit all on-street parking. He further agreed that The Avalon School would take whatever steps are necessary to limit student parking to the spaces available on the site.

Of even greater importance is the need to avoid having a line of vehicles waiting on Rte. 355 to get into the subject site. Rte. 355 has only one lane in each direction at this location, and the undisputed evidence is that traffic moves at a high rate of speed. Petitioner's traffic expert, Stephen Petersen, testified that any stacking of cars on Rte. 355 could create a traffic problem by causing a back-up in the northbound lane. He opined, however, that the site would be able to accommodate drop-offs and pick-ups without off-site queuing, as discussed below.

Petitioner currently plans to direct parents to drop off students in the morning behind the Administration/Library/Chapel building at the rear of the site, which is the mid-point of the driveway. Mr. Petersen testified that this location would allow space for approximately 20 cars to wait on site in a single lane, without backing up onto Rte. 355. He believes that this would be sufficient to avoid off-site stacking because in the morning, parents tend to drop students off and leave quickly. If necessary, however, Mr. Petersen noted that the morning drop-off point could be moved farther into the site to increase the amount of driveway space available for stacking. It should also be reiterated that

Petitioner expects many of the students to arrive at school by van, rather than by private vehicle, reducing the number of vehicle trips.

Afternoon pick-up is always a challenging period for schools because of the time it takes to match students with the right cars. Petitioner currently plans to establish a point opposite the Classroom Building, just about the farthest point on the site from the entrance, as the afternoon pick-up location. Mr. Petersen testified that between the entrance and that pick-up location, there would be space for approximately 33 vehicles to wait in a single line without backing up onto Rte. 355. Based on current operations, Mr. Petersen believes that will be sufficient space, even with an enrollment of 600, because a fair number of students are not picked up by individual cars and many students participate in after-school activities, so pick-up is not as concentrated as it is at many schools. He noted, in addition, that if there is not enough space, the 22-foot width of the driveway could accommodate a double row of vehicles, essentially doubling its capacity.

Mr. McPherson testified that at its current location, with an enrollment of 237, The Avalon School generally has a queue of no more than 7 to 8 cars at one time during afternoon pick-up. Providing space for 33 cars to stack on the subject site would allow four times as many cars to line up for pick-up. Mr. McPherson contended that this would be ample, considering that the maximum enrollment envisioned at this site is 600, which is roughly two and half times the current enrollment. He also testified that as enrollment increases, he expects the number of vehicles waiting at pick-up to decrease in proportion to the number of students, because with a larger enrollment the school will have more after-school activities.

In addition to regular classes and after-school activities, The Avalon School also holds a number of evening and weekend events, some of which attract large numbers of attendees. Petitioner believes that two of these, a Christmas party and graduation, “generate enough traffic to potentially cause off-campus traffic impacts.” Ex. 57(c). The school proposes that for these events, both of which occur on Sundays, off-campus parking will be provided at the Lakewood Church of God (across Rte. 355 from the subject site) or Clarksburg High School, which is less than a quarter-mile away. See Ex.

57(c). A letter from the principal of Clarksburg High School dated April 16, 2007 grants permission for The Avalon School to use the Clarksburg High School parking lot on June 8, 2008 from 3:00 to 7:00 p.m., and on December 14, 2008 from 3:00 to 7:00 p.m. See Ex. 57(b). This hardly constitutes a long-term commitment on the part of the high school to permitting The Avalon School to use its parking lot. Communications from the Lakewood Church of God are similarly vague. In a letter dated January 16, 2007, the church states that it “would consider allowing some of the School’s overflow parking” to use its lot on occasions when parking for special events (“e.g., Parents’ Night, school fair, etc.”) might exceed the number of spaces available on campus. Ex. 41. The letter reflects an understanding that the school would extend the same courtesy if parking for a church event exceeded its capacity. In a letter dated April 17, 2007, the pastor of the church states that he does not know how often the church would use the school’s parking, but he “can’t imagine it averaging one time a month and even then it would not be used by a large number of people.” Ex. 57(a). The pastor also suggests that the church would provide a shuttle service “as much as possible” to minimize pedestrian traffic on Rte. 355. *Id.*

The Hearing Examiner does not consider it prudent to rely on the one-year permission from Clarksburg High School over the long term. To the extent permission is granted on a yearly basis, parking at the high school would be a good option. It is not clear, however, whether this will be the case. Moreover, the Hearing Examiner is concerned that an open-ended parking-sharing arrangement between The Avalon School and the Lakewood Church of God could adversely affect the school’s neighbors by increasing the number of weekend days, or perhaps evenings, when the school site is active. In some circumstances parking cars on the grass might be an option, but this is not appropriate in a special protection area because vehicular parking can lead to compacting the soil, turning it, effectively, into an impervious surface. To make use of the nearby church site appropriately, the conditions of approval recommended at the close of this report put some specificity into the neighborly agreement between the church and the school. This is discussed further below.

Mr. McPherson provided a list of some of The Avalon School's special events that attract smaller crowds than the Christmas party and graduation. The list, reproduced below from Exhibit 57(c), estimates the frequency of each type of event and the number of people likely to attend.

Other recurring special events (not including scheduled athletic games) on campus include:			<u># of Persons</u>
Family Cookouts	Weekday/Evening	3 times	150 - 250
Sports Banquets	Weekday/Evening	3 times	150 - 200
Chesterton Lecture Series	Weekday/Evening	4 times	70 - 100
Back-to-School Nights	Weekdays/Evening	4 times	150 - 200
Halloween Party	Weekend/Evening	1 time	150 - 200
College Counseling	Weekday/Evening	2 times	30 - 50
Admissions Open House (Fall)	Weekend/Day	1 time	150 - 250
Admissions Open House (Spring)	Weekend/Day	1 time	75 - 150
Report Card Days	Weekday/Day	3 times	200 - 250
Poet Laureate Night	Weekday/ Evening	3 times	150 - 250
Maryland Day	March 25	1 time	150 - 250
Grandparents' Day	Weekday/Day	1 time	150 - 200
Eighth Grade Graduation	Weekday/Evening	1 time	100 - 150
Baccalaureate Mass	Weekend/Evening	1 time	150 - 250

Some of these events, such as the Chesterton Lecture Series, College Counseling and the spring Open House, involve anticipated attendance levels that could reasonably be accommodated within the proposed on-site parking areas. Aside from these, the Hearing Examiner counts 22 events with an expected attendance (150 or more) that could not be accommodated within the proposed on-site parking areas unless there is an unusually high rate of per-vehicle occupancy. These 22 events would occupy 14 weekend evenings, one weekend day, one weekend evening and one weekday, in addition to the Christmas party, graduation and other events that are not on the list.⁵ Petitioner maintains that because the events "are generally 'family oriented,' a higher than normal vehicle occupant load has been observed and is anticipated to continue at the new campus." Ex. 57(k) (Transportation Management Plan) at 9. The Hearing Examiner finds it implausible, however, to expect that every time the school hosts an event with 250 people, attendees can be relied upon to arrive in vehicles carrying an average of more than three people each. The Hearing Examiner assumes,

⁵ Petitioner's President testified that the school has weekend events about twice a month and weeknight events about four times per month. See Tr. at 27-29.

therefore, that The Avalon School would need to make use of the church parking lot not only for the Christmas party and graduation, but on a regular basis. This raises two issues: (i) the impact of church parking on the subject site; and (ii) pedestrian safety. Each is addressed below.

To avoid adverse impacts on the neighbors from unlimited church parking, the recommended conditions of approval limit parking at the subject site for church purposes to no more than once a month, during times when there are no activities taking place at The Avalon School. The Hearing Examiner acknowledges that this puts The Avalon School in the position of potentially asking to use the church's parking lot more frequently than the church is permitted to use the school's parking. Should this arrangement not be acceptable to the church, Petitioner will need to identify other options, such as making a payment to the church, or identifying a commercial location where parking can be available for a fee, with a shuttle service to the school site. Petitioner has itself suggested one option, stating in its Transportation Management Plan that "if any recurring event grows to the point of threatening off-campus bottlenecks and slowdowns despite intensive traffic management measures, Avalon will modify the event itself to reduce traffic volume and will engage staff to ensure that queues do not extend onto Maryland Route 355." Ex. 57(k) at 9. Due to the lack of certainty concerning how well parking arrangements will work, the recommended conditions of approval also reserve jurisdiction for the Board of Appeals to impose additional conditions related to parking, including a cap on the number of special events or a reduction in enrollment, if future evidence so warrants.

Pedestrian safety at this location was raised by the adjoining neighbors to the south, who described crossing on foot as "treacherous" due to the speed of traffic and a crest in the road. The issue was implicitly addressed by the church as well, which stated that it would provide a shuttle service from the subject site to the church for its parishioners, whenever possible, to minimize or eliminate pedestrian traffic on MD 355. See Ex. 57(a). The record suggests no reason why reducing or eliminating pedestrian traffic on MD 355 would be beneficial except to avoid a safety problem. In view of this evidence, the recommended conditions of approval require Petitioner to provide a shuttle service

from one parking lot to the other, or a crossing guard if county regulations allow it, when attendance at a special event is expected to exceed 160 and the church lot is designated for overflow parking.

E. Environment and Landscaping

The subject site is located entirely within the Clarksburg Special Protection Area. Accordingly, development of the site requires the preparation of a water quality plan. Petitioner's water quality plan was approved by the Department of Permitting Services on March 1, 2007 with regard to stormwater quality and quantity control and sediment and erosion control. See Environmental Planning Memorandum of February 7, 2007, Attachment 6 to Staff Report ("Environmental Planning Memo"). The Planning Board has responsibility for approving the water quality plan as to site imperviousness, environmental guidelines for impervious areas and forest conservation requirements.

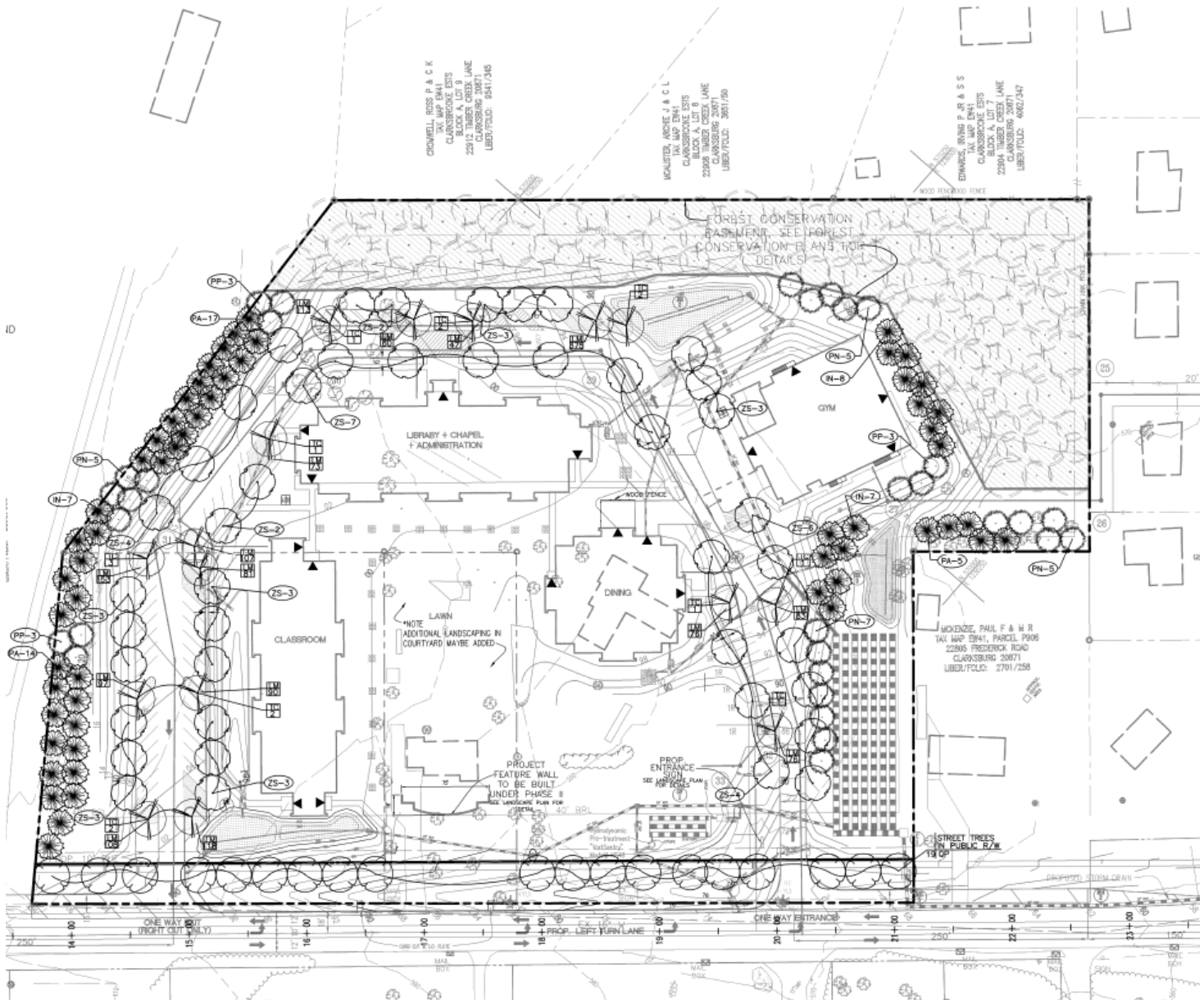
Although the Clarksburg Special Protection Area does not have a mandated imperviousness limit, Environmental Staff at the MNCPPC uses a target of 22 to 29 percent impervious area. Environmental Staff reports that to achieve an impervious surface level slightly under 29 percent of the site, Petitioner eliminated a building from its original plans and agreed to use porous pavers that increase infiltration and groundwater recharge. Environmental Planning Memo, second page. Accordingly, Environmental Staff recommends approval of the water quality plan by the Planning Board.

The subject site currently has no forest. To satisfy forest conservation requirements, Petitioner would be required to plant 1.65 acres of forest, which would be covered by a forest conservation easement. The new forested area, as depicted on the Landscape Plan reproduced below, would occupy the corner of the site behind the gymnasium, and stretch along the northeastern border. Once established, the forested area would create a forested buffer for the neighbors approximately 60 to 80 feet deep along the rear of the site, and approximately 90 to 160 feet deep behind the gymnasium.

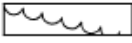
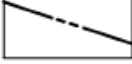
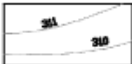
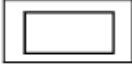

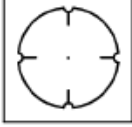

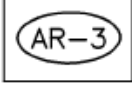
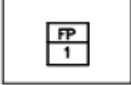
Petitioner also plans to install extensive evergreen landscaping to shield or soften the view of the gymnasium and the driveway/parking areas. In addition, Mr. McPherson discussed a potential desire to plant trees in the central courtyard area that would be good for climbing, to replace

the trees that would be cut down for construction of the administration building. This is reflected in a note on the Landscape Plan. Additional notes not reproduced in this report provide extensive direction regarding the quality of plants to be used and how they are to be planted and cared for.

Landscape Plan Graphics, from Ex. 57(g)
(see next page for legend and plant list)



Landscape Plan Legend, from Ex. . 57(g)

LEGEND	
EX. TREELINE	
PROPERTY LINE	
CONTOUR LINES	
EX. BUILDING	
PROP. SHADE TREES	
PROP. STREET TREES	
PROP. EVERGREEN TREES	
LANDSCAPE REQUIREMENT FOR PARKING AND LOADING FACILITIES FOR SPECIAL EXCEPTION USES IN RESIDENTIAL ZONES AND STREET TREES	
INTERNAL LANDSCAPE REQUIREMENT OF SURFACE PARKING FACILITY	

Landscape Plan Notes, from Ex. 57(h)

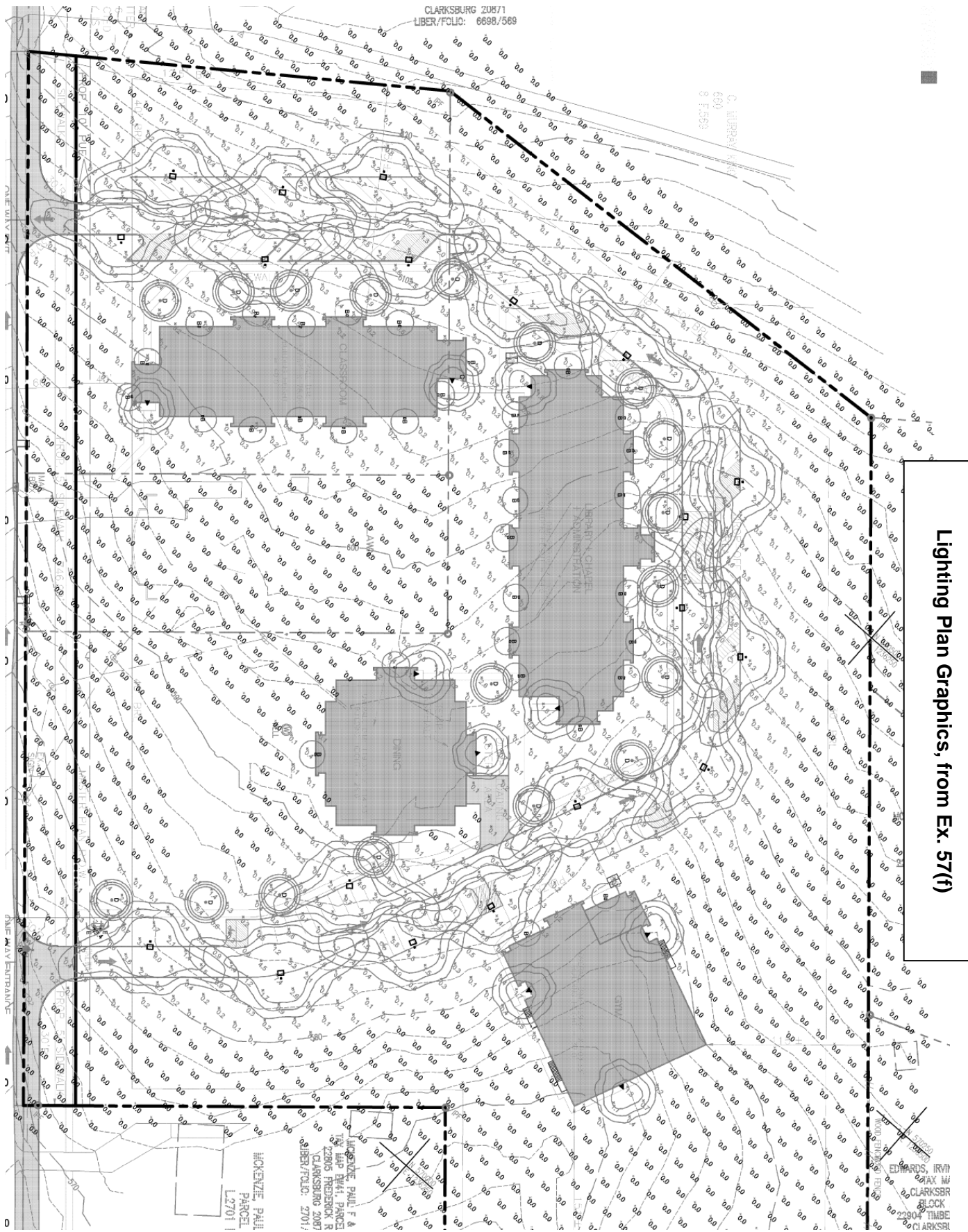
PLANT LIST					
SYMBOL	QTY.	SCIENTIFIC/ COMMON NAME	SIZE	ROOT	SPACING
TC	16	TILIA CORDATA 'GREENSPIRE' GREENSPIRE LITTLELEAF LINDEN	2.5"– 3" CAL	B&B	PLANT AS SHOWN
ZS	43	ZELKOVA SERRATA 'GREEN VASE' GREEN VASE ZELKOVA	2.5"– 3" CAL	B&B	PLANT AS SHOWN
IN	22	ILEX X NELLIE R. STEVENS' NELLIE R. STEVENS HOLLY	6' – 8' HT.	CONT.	PLANT AS SHOWN
PA	36	PICEA ABIES NORWAY SPRUCE	6' – 8' HT.	CONT.	PLANT AS SHOWN
PP	9	PICEA PUNGENS "THOMPSENII" THOMPSENII BLUE COLORADO SPRUCE	6' – 8' HT.	CONT.	PLANT AS SHOWN
PN	22	PINUS NIGRA AUSTRIAN PINE	6' – 8' HT.	CONT.	PLANT AS SHOWN
LM	1657	LIRIOPE MUSCARI 'BIG BLUE' BIG BLUE LILY TURF	4" POT	CONT.	PLANT 18" O.C.
STREET TREE					
QP	19	QUERCUS PALUSTRIS PIN OAK	2.5"– 3" CAL	B&B	PLANT AS SHOWN

* ADDITIONAL PLANTINGS IN COURTYARD MAYBE ADDED






The McKenzies, adjoining neighbors to the south, requested in a post-hearing letter that Petitioner build a privacy fence on the boundary between their property and the school's. See Ex. 56. The letter indicates that a fence was offered during community meetings. The Hearing Examiner fully expects that if this request had been made during the hearing Petitioner would have readily agreed. The Hearing Examiner notes, in addition, that the submitted Statement of Operations states that "fencing around the perimeter of the property will separate the school property from adjoining residential areas." Ex. 3 at 5. If perimeter fencing is shown on the Site Plan, it is not readily identifiable, perhaps because the Site Plan lacks a legend. The recommended conditions of approval require Petitioner to submit a revised Site Plan, before the special exception takes effect, depicting privacy fencing along the property lines between the subject site and the McKenzie property, and depicting any additional fencing Petitioner plans to install, together with a legend.

F. Lighting, Signage and Utilities

Proposed exterior lighting consists of 19 shoe-box-type pole lights along the driveway/parking areas, pointing down, with 175 watt bulbs on 18 foot poles; 33 wall-mounted, shielded luminaries with 32-watt bulbs; 18 bollard lights with 50-watt bulbs to provide pathway lighting; nine building sconces with 50-watt bulbs; and two 70-watt architectural floodlights for the entrance sign. See Ex. 57(f). The submitted Lighting Plan, reproduced on the pages that follow, includes photometrics showing that the level of illumination from all exterior lights would reach zero well before the property lines.




Additional Elements of Lighting Plan, Ex. 57(f)

LUMINAIRE SCHEDULE									
Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
	A	19	SSS1844CD1R2BZ /SMST175MHXXP MBZ	SOMERSET LUMINAIRE ON 18 FOOT SQUARE STEEL POLE	175W CLEAR SMH	36016.IES	15000	0.81	212
	B	33	AHS-5414	Teka wall mounted luminaire	ONE 32-WATT TRIPLE TUBE COMPACT FLUORESCENT, HORIZONTAL POSITION.	LTL7334.ies	2400	0.75	36
	D	18	KBR6 50M R5	6 IN ROUND BOLLARD	ONE 50 WATT CLEAR E- 17 METAL HALIDE, VERTICAL BASE-DOWN POSITION.	94033107.IES	3400	1.00	72
	E	2	H70070M120MFLK MARJB-BK	7000 SERIES ARCHITECTURAL FLOODLIGHT	70W METAL HALIDE WITH HAMMERTONE REFLECTOR 8.75" X 3.75" TEMPERED GLASS LENS 0 DEG PLANE PERPENDICULAR TO LAMP	4991A.IES	5600	0.75	94
	F	9	MRW 50M MD	ARCHITECTURAL SCONCE WITH MEDIUM THROW DISTRIBUTION WITH CLEAR, FLAT GLASS LENS. COATED LAMP.	ONE 50-WATT COATED ED-17 METAL HALIDE, HORIZONTAL POSITION.	Ltl11543.ies	3200	0.72	72

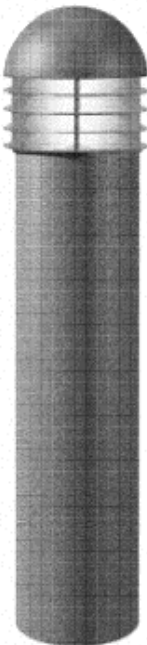


Additional Elements of Lighting Plan, Ex. 57(f)



Hokaplan
RECREATION LIGHTING

RECREATION LUMINAIRES
Product Catalog




Bollards

The H100 Series louvered bollard provides simplified geometric forms that will both complement and blend with a variety of architectural settings. Rugged in design and functional in performance, these bollards will meet even the most demanding installation requirements.

When long term durability and ease of installation is what's needed in a bollard, Hokaplan can fill the need. Interlocking louvers, extruded aluminum pillar, and welded cast aluminum mounting plates are the key to the H100 Series success. A patented 6-point internal leveling system makes the external mounting system and leveling methods of existing bollards obsolete.


A performance based louver system utilizing a low glare upper surface combined with a high reflectance lower surface maximizes light output while reducing offensive glare common in most bollards.



H101
H102
H103
H104

BOLLARD DETAIL

HOKAPLAN®/RECREATION LIGHTING

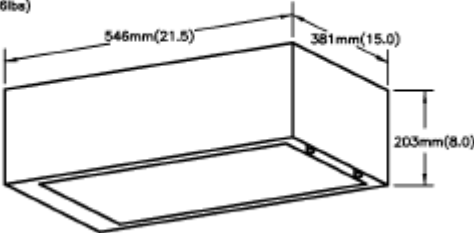
LEGEND: 

SOMERSET[®] SERIES LUMINAIRES

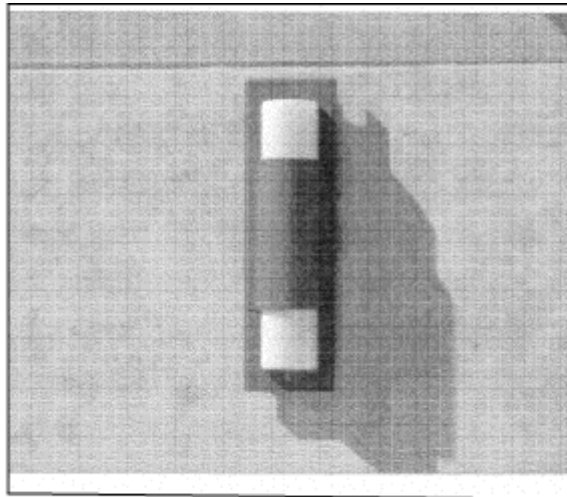
U.L. LISTED
1572 WET LOCATION
C.S.A. CERTIFIED

MAX WEIGHT: 16kg (36lbs)

EPA: 1.43 sq. ft.



Additional Elements of Lighting Plan, Ex. 57(f)



Product Number	Lamp	Faceplate	Standard Finish
AHS-5414	39W 2G11	Copper	Natural
AHS-5444	39W 2G11	St. Sl.	None

The longer version of the Arcade Half Shield luminaire complies with ADA requirements and utilizes a high output, compact fluorescent lamp. Copper or stainless steel faceplate with copper or stainless steel rivets, translucent white etched acrylic diffuser. Provided with integral 120V HFF electronic ballast for minus 15°F starting. May be mounted over a 3 1/2" or 4" octagonal wiring box.

Options available at additional cost...

A. Add suffix BP for brown patina

B. Add suffix 277 for 277 V electronic HFF ballast

- NOTE: 1) LIGHTS TO BE MOUNTED 22' ABOVE THE BUILDING FINISHED FLOOR.
2) LIGHT TO CONNECTED TO TIMER CONTROL.

WALL MOUNTED LUMINAIRE

LEGEND:



FEATURES & SPECIFICATIONS

INTENDED USE

For building and wall-mounted applications.

CONSTRUCTION

Rugged, die-cast, single piece aluminum housing. Die-cast doorframe has a 1/8" thick tempered glass lens. Doorframe is fully gasketed with one-piece solid silicone.

FINISH

Standard finish is textured dark bronze (DDBT) corrosion-resistant polyester powder finish, with other architectural colors available.

OPTICAL SYSTEM

Segmented reflectors provide superior uniformity and control. Reflectors are interchangeable. Three full cutoff distributions available: FT (forward throw), MD (medium throw) and WT (wide throw).

ELECTRICAL SYSTEM

50W metal halide 150W utilizes a high resistance, high power factor ballast. 355 and 505 utilize a reactance normal power factor ballast. 175W utilizes a constant-voltage auto transformer ballast. HID ballasts are copper wound and 100% factory tested. Porcelain, medium-base socket with copper alloy, nickel-plated screw shell and center contact. ILL listed 600W, 600V 4KV pulse rated. Compact fluorescent utilizes a Class P, electronic, high power factor ballast, <10% THD with starting temperature of 0°F. Fluorescent socket is high temperature thermoplastic with an integral lamp retention clip. Quick-disconnect plug easily disconnects reflector from ballast.

INSTALLATION

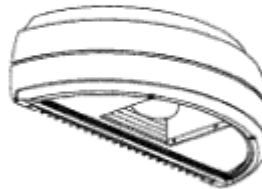
Universal mounting mechanism with integral mounting support allows fixture to hinge

Catalog Number	
Notes	Type



Wall-Mounted Lighting

MRW



Standard dimensions - MRW

Length: 18" (45.72)

Depth: 9" (22.86)

Overall Height: 7.25" (18.42)

METAL HALIDE

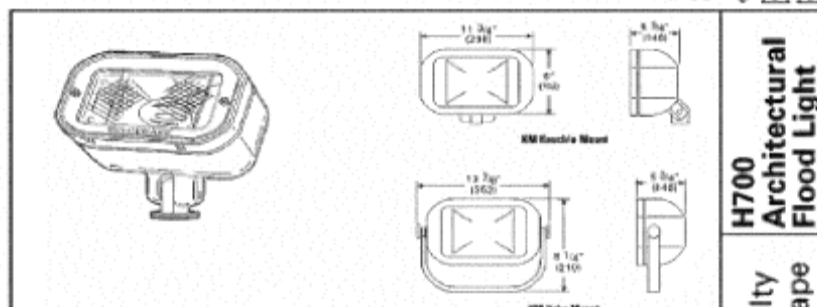
50W-175W

HIGH PRESSURE SODIUM

35W-150W

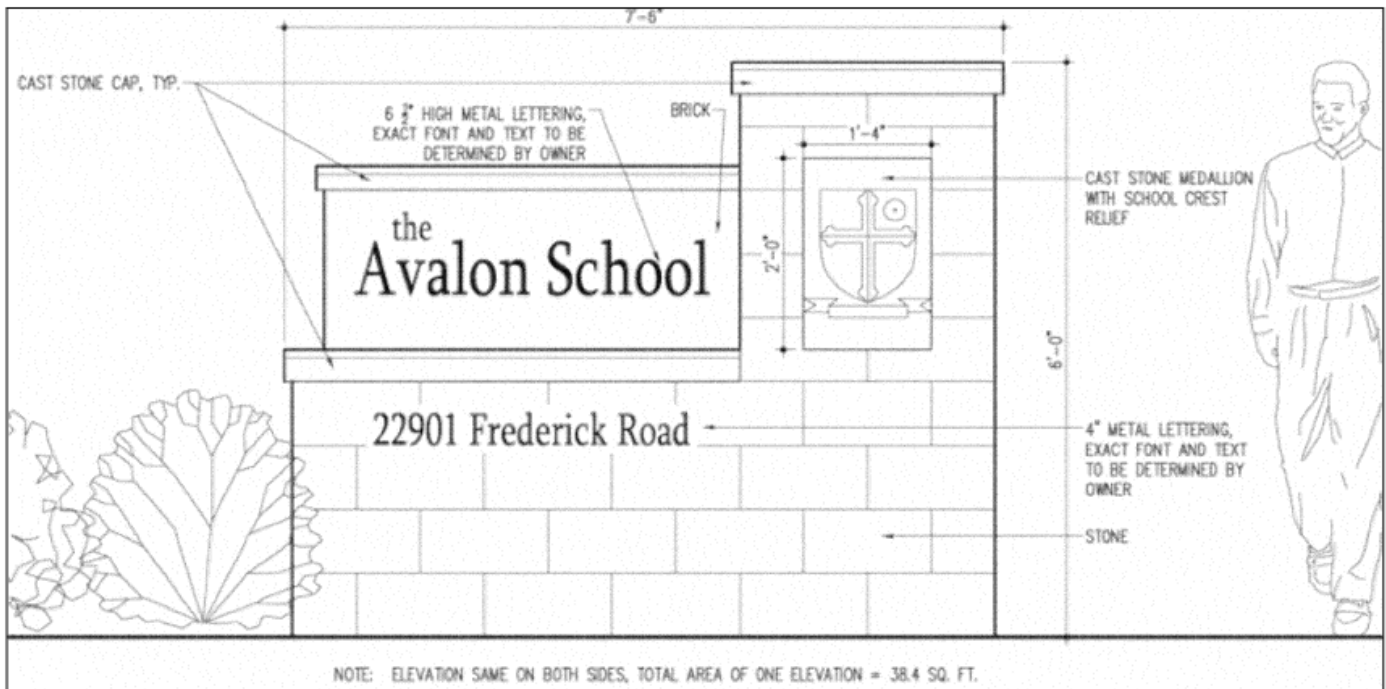
COMPACT FLUORESCENT

260TT-2/42TRT



Petitioner proposes to erect a monument sign near the vehicular site entrance, as depicted below. The sign is planned to measure about eight feet by five feet, consistent with the maximum 40-square-foot size permitted in the Zoning Ordinance, and to have modest illumination. The proposed conditions of approval would limit Petitioner to a single sign as proposed, to be within the size permitted by right.

Proposed Entrance Sign, from Ex. 57(h)



The Staff Report indicates that the subject site would be served by adequate water, sanitary sewer, storm drainage and other public facilities. See Staff Report at 8. Given its existing residential use and surrounding development, it may be assumed that other utilities such as electricity and telephone services would also be available.

G. Traffic

The evidence related to traffic addressed the requirements of Local Area Transportation Review, the need for deceleration and acceleration lanes for the site entrance and exit, the need for a left turn lane into the site and a proposed Transportation Management Plan. Each of these main topics is discussed below.

1. LATR Requirements

One of the “general conditions” that must be satisfied before a special exception may be granted states that if the proposed use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review, and subdivision approval must be included as a condition of the special exception. See Code § 59-G-1.21(a)(9). This is the case for the present application, which would require subdivision approval to combine the three lots into one. Thus, the ultimate responsibility for determining the adequacy of public facilities rests with the Planning Board. Nonetheless, the Board of Appeals retains the responsibility to assess compliance with general condition number four, which requires a finding that the proposed special exception will be in harmony with the general character of the neighborhood considering, among other things, traffic and parking conditions. Accordingly, a review of traffic and parking issues is necessary.

Under the County’s 2003-05 Growth Policy Element, which remains in effect, subdivision applications are subject to only one transportation test, Local Area Transportation Review (“LATR”).⁶ LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hours of the morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.). Petitioner performed a traffic study as required in this case, taking into account existing roads, programmed roads and available or programmed mass transportation, as well as existing traffic, traffic anticipated from nearby development that is approved but unbuilt (“background” traffic), and trips expected to be generated by the proposed development. Technical Staff directed the Applicant to study the effects of the proposed development on the critical lane volumes (“CLVs”) at four nearby intersections: Clarksburg Road (MD 121)/Gateway Center Drive/Stringtown Road extended (under construction), MD 355 and Stringtown Road, MD 355 and Shawnee Lane, and MD 355 and Little Seneca Parkway. The traffic study indicates that during the morning and evening peak hours, each of these intersections currently operates well below the

⁶ See 2003-05 AGP Policy Element at 6-7; *Local Area Transportation Review Guidelines Approved and Adopted July 2004* (“LATR Guidelines”) at 1. The Hearing Examiner hereby takes official notice of the LATR Guidelines.

maximum CLV of 1,450 that that the County has established as acceptable in the Clarksburg Policy Area. See Ex. 14 at 7. When background traffic is added in, however, CLVs at three of the intersections (Clarksburg Road (MD 121)/Gateway Center Drive/Stringtown Road extended and MD 355 at Stringtown Road and Little Seneca Parkway) are roughly 100 CLVs away from the congestion standard, suggesting that this road network can accommodate only a limited amount of additional traffic, even with the extensive road improvements underway or in the planning stages.⁷ See *id.* at 12.

Petitioner's traffic consultant, Mr. Petersen, conducted five days of driveway traffic counts at The Avalon School's current location in May, 2006, when school was in normal session. He used these counts to estimate a trip generation rate for the morning and evening peak hours that could be applied to the projected full enrollment of 600 students. Consistent with the LATR Guidelines, the "peak hours" Mr. Petersen used for this purpose were the peak hours for street traffic in the area of the subject site (LATR directs a project proponent to assess traffic impact during the "peak hour," which is the 60-minute portion of the three-hour peak period when traffic is the highest at a given location). Mr. Petersen developed a composite peak hour for street traffic in this case, because the actual peak hours were different at each of the four intersections he studied.⁸ The peak hours he identified were 7:15 to 8:15 a.m. and 4:15 to 5:15 p.m. See Ex. 14 at 16. The existing driveway counts indicate that The Avalon School currently generates 0.15 trips per student between 7:15 and 8:15 a.m. and 0.16 trips per student between 4:15 and 5:15 p.m.. Applying this to 600 students, Mr. Petersen concluded that The Avalon School would generate 90 trips during the morning street peak hour of 7:15 to 8:15, and 96 trips during the evening street peak hour of 4:15 to 5:15. Calculating the impact of these trips on CLVs from existing and background trips in the area, Mr. Petersen found that with The Avalon School at full

⁷ With the agreement of Technical Staff, the existing and background traffic numbers were adjusted to account for a number of planned roadway improvements: the extension of Stringtown Road to the west, currently under construction, the construction by a developer of a new road linking Frederick Road and Clarksburg Road, restriping that has been planned for the northbound approach to Stringtown Road extended from Gateway Center Drive, and the widening of Shawnee Lane to four lanes between Gateway Center Drive and MD 355. See Ex. 14 at 7-12; Transportation Planning Staff memorandum attached to Staff Report. These adjustments reflect the anticipated redistribution of existing traffic to and from the east of Frederick Road, resulting in lower CLVs at the four intersections studied.

⁸ Mr. Petersen's methodology was to draw a cordon line around Clarksburg and record traffic volumes entering and leaving the cordon during the peak periods.

enrollment, the four intersections studied would remain below the maximum CLV of 1,450 during the street peak hours. See Ex. 14 at 16-17. At some of the intersections, there is little room to spare: with the proposed school, CLVs would be 67 below the congestion standard at MD 355 and Stringtown Road, 82 below the standard at MD 355 and Little Seneca Parkway, and 98 below at Clarksburg MD/Gateway Center Drive/Stringtown Road extended. See *id.* at 17. Nonetheless, the requirements of LATR would be satisfied.

At the request of MNCPPC Transportation Planning Staff, Petitioner studied traffic impacts during the school's peak hours, in addition to the street peak hours. The Avalon School's peak traffic hours are 8:00 to 9:00 in the morning and 3:00 to 4:00 in the afternoon.⁹ Traffic generation is much higher during these hours than during the street peak hours: .64 trips per student during the morning peak hour and .41 trips per student during the afternoon peak hour. Based on these trip generation rates, at full enrollment the school would generate 371 vehicle trips to and from the school during its morning peak hour (trip generation is lower in the afternoon because of after-school activities). See Transportation Planning memorandum attached to Staff Report ("Transportation Memo") at 4. That level of trips would not cause any of the four intersections studied to exceed the acceptable level of CLVs. See *id.* However, Technical Staff observed that without its vanpooling and carpooling programs, The Avalon School could generate as many as 468 trips during the morning peak hour, which would have an adverse impact on traffic conditions at the intersection of MD 355 and Stringtown Road, just north of the site. Technical Staff found that the MD 355/Stringtown Road intersection can accommodate no more than 420 trips to and from The Avalon School during the school's morning peak hour without exceeding the maximum acceptable level of CLVs. See *id.* This is due, in part, to the fact that the State Highway Administration ("SHA") has recommended that the proposed school exit be restricted to right-in/right-out turns only because of a rise in the road that limits visibility to the south. Transportation Staff therefore recommends establishing a goal in Petitioner's

⁹ The peak hour for arrivals starts about 45 minutes before classes start at 8:50, and the peak hour for departures starts about 15 minutes before classes end at 3:15. Mr. Petersen characterized this pattern as typical of data he has collected at both private and public schools in Montgomery County.

Transportation Management Plan of no more than 420 vehicle trips during the school's morning peak hour.

The Transportation Memo did not recommend 420 as a regulatory cap, but rather as a goal. See *id.* The Planning Board, however, recommended as a condition of approval that Petitioner be required to "[i]mplement programs as necessary to ensure that morning trips to and from the site will not exceed 420 during the peak hour." Ex. 35 at 2. In response to a question from the Hearing Examiner, Technical Staff clarified that based on the Planning Board's discussion of this issue, 420 is a solid number that the school may not exceed.

Petitioner and its counsel displayed a surprising reluctance to accept a cap of 420 trips, apparently due to a concern that a requirement to monitor the number of trips generated would be burdensome. Petitioner maintained that a cap is not necessary because of its vanpooling and carpooling success. This contention is undercut to some extent by Petitioner's Transportation Management Plan, which states that Petitioner does not consider it realistic to maintain a rate of vanpooling over 60 percent as the school grows. See Ex. 57(k) at 6. The Transportation Management Plan indicates that the van fleet would likely rise from ten to 14 or 15, but would not expand beyond that. Mr. Petersen emphasized that even with more than 420 trips, the school would not have an adverse impact on the MD 355/Stringtown Road intersection if SHA were to allow exiting vehicles to turn both directions, taking some of the traffic away from the MD 355/Stringtown Road intersection. Mr. Petersen testified that based on his informal discussions with SHA officials, he believes the SHA would lift the right-out restriction if the school provided a police officer on MD 355 in front of the site to direct traffic during the school's morning and afternoon peak hours. See Tr. at 124, 131. However, both the continued success of the school's efforts to reduce trips and the possibility of lifting the right-turn-out-only restriction are uncertain. Moreover, anecdotal evidence from a neighbor indicates that this stretch of MD 355 already experiences traffic congestion during the peak hours, even without the considerable background traffic projected. In the Hearing Examiner's view, lengthening the period of congestion on this stretch of roadway by creating congestion during the school's peak hours would impose

unacceptable adverse impacts on the neighborhood. Those potential impacts justify imposing on Petitioner an obligation to monitor its traffic generation and take whatever steps are necessary, including cutting enrollment, to keep its traffic levels below the 420-trip threshold. This obligation is reflected in the recommended conditions of approval.

2. Deceleration and Acceleration Lanes, Left-Turn Lane and Sidewalk

The proposed school project would require access permits from SHA for the driveway entrance and exit onto MD 355, a state roadway. Pre-hearing correspondence from SHA indicates that the proposed access arrangement is acceptable only if three conditions are met: (i) both access points meet sight distance requirements (requiring the right-turn-out restriction described in the previous section); (ii) the proposed entrance is shifted slightly south to line up with the church entrance across the street (a review of the Site Plan, Exhibit 57(i), suggests that this has been done); and (iii) the applicant constructs both a left-turn lane into the site from southbound MD 355 and a 250-foot long, 16-foot wide deceleration lane into the site from northbound MD 355.¹⁰ See Exs. 48, 49.

Petitioner has agreed to construct a left-turn lane as required, and to dedicate the road frontage necessary to accomplish this. See Tr. at 149, 215-216. The subject site is not wide enough, however, to permit construction of a 250-foot long deceleration lane within Petitioner's property. This could only be accomplished by purchasing street frontage or an easement from the adjoining property, owned by the McKenzie family. In addition to this SHA requirement, the Planning Board and Technical Staff recommend that Petitioner be required to construct a five-foot sidewalk along its MD 355 frontage and from its property line to the corner of Shawnee Lane to the south, as well as lead-in sidewalks from MD 355 to both of the proposed driveways. The McKenzies participated in the hearing process and have indicated it is very unlikely that they would make a portion of their land available for these purposes, because doing so would damage their property by requiring a retaining wall along MD 355.

¹⁰ SHA notes that the traffic study it initially reviewed described a single access point with full turning movements. Ex. 49. This would be SHA's preference, as it would facilitate the construction of a full-length deceleration lane. Changing to a single access point after approval of the special exception would require application to the Board of Appeals to modify the special exception.

The Planning Board and Technical Staff recommended as a condition of approval of the special exception that Petitioner be required to use “good faith efforts” to acquire the right-of-way necessary to build a sidewalk to Shawnee Lane. The Planning Board did not specifically address the deceleration lane requirement. In response to a question from the Hearing Examiner, Transportation Planning Staff suggested that the full 250-foot lane should be required as a condition of approval, and that if Petitioner were unsuccessful in its efforts to acquire the right-of-way, SHA could do so using its powers of eminent domain. See Ex. 37. During the hearing, Mr. Petersen testified that in his experience, SHA does not exercise eminent domain on behalf of private projects. He suggested that asking for a 250-foot deceleration lane is an effort by SHA to upgrade MD 355, which has numerous driveways lacking any deceleration lane at all. Mr. Petersen stated that Petitioner could build a deceleration lane within its property lines that would be approximately 90 feet long and 16 feet wide. He opined, both at the hearing and in a post-hearing letter to Petitioner’s counsel, that while 250 feet would be optimal, 90 feet would be “sufficient to provide for the safe operation of northbound through traffic on MD 355.” Ex. 57(j).

SHA confirmed in a post-hearing email that it has consistently refused to exercise its eminent domain authority for private projects. See Ex. 53. If Petitioner is unable to obtain the right-of-way necessary for a 250-foot deceleration lane after good-faith negotiations with the property owner, SHA procedures directs it to “work with SHA to achieve the most favorable design possible without the additional right-of-way.” Letter from Stephen Petersen, Ex. 57(j); see *a/so* Ex. 53. Based on many years of experience, Mr. Petersen expects that SHA would not deny an access permit for this project due to inability to obtain the right-of-way necessary for a full 250-foot deceleration lane.

Having been informed by Mr. Petersen of SHA’s confirmation that the agency has consistently declined to exercise eminent domain authority for a private project, Transportation Staff at the MNCPPC agreed that the shorter deceleration lane that can be built within Petitioner’s property would be adequate to provide safe access to the site. See Ex. 59.

The correspondence from SHA does not mention an acceleration lane, but such a lane is shown on the site plan with a 250-foot length, provided the necessary right-of-way can be obtained. Petitioner expects that the necessary right-of-way for this lane will be available.

3. Transportation Management Plan

Petitioner has submitted a Transportation Management Plan ("TMP") that describes "the transportation management strategies to be employed by The Avalon School in implementation" of the requested special exception. Ex. 57(k). Petitioner suggests the following condition of approval with regard to the TMP:

Petitioner is bound to conduct the traffic and parking operations of the School as set forth in the Transportation Management Plan included in the record or as it may be amended in the future with advice of the Community Liaison Committee.

Petitioner's counsel and the People's Counsel stated at the hearing that in an earlier case involving a private educational institution known as The French International School, the TMP was written so that it could be amended, after discussion with the community, without having to seek a modification of the special exception from the Board of Appeals. See Tr. at 5-12. This, it appears, is the genesis of the language Petitioner now suggests. The Hearing Examiner does not object to leaving room for amendment of the TMP, but has employed somewhat different language in the recommended conditions of approval to ensure that the Board of Appeals and other relevant county agencies are informed of any changes to the TMP, that such changes are done only with the consent of a majority of non-school representatives on the Community Liaison Committee to be formed as a condition of approval, and that the Board of Appeals retains jurisdiction to review any changes to the TMP on its own initiative or for good cause shown.

The TMP is attached in its entirety as an appendix to this report, and is summarized below. The TMP first describes the existing operation of The Avalon School and its planned growth. It states the following objectives:

1. Manage the flow of traffic at the School's point of access and egress so that vehicular traffic movements are made in a safe and efficient manner without impeding the flow of traffic on Frederick Road;

2. Ensure that on-site queuing and circulation of vehicles on campus is conducted in an organized and efficient manner that supports the School's operations;
3. Reduce the volume of traffic, whenever possible, to and from the Avalon campus so as to support objectives 1 and 2 above and to minimize traffic on surrounding streets and roads; and
4. Maintain or improve the current number of students who commute by school van or carpool.

Ex. 57(k) at 2.

The TMP has three major components: minimization of vehicular traffic, management of vehicular traffic and dispersal of traffic away from the peak hours of usage of Frederick Road. The first component would involve continued efforts to encourage carpooling, the use of school vans and public buses, and restrictions on vehicles that may be driven to campus. The TMP includes detailed measures such as collecting data and creating maps to facilitate carpools, extolling to parents the benefits of carpooling and vans, maintaining a car-pool registry, developing incentives for car-pooling and van usage such as parking privileges and priority seating for special events, and expanding school-operated van transportation from the current fleet of 10 vans to a total of 14-15.¹¹ The TMP states that limitations on student eligibility to drive to school “will be included in the School’s analysis to achieve its stated goals,” and that restrictions could be managed via the sale and mandatory use of student parking tags. Mr. McPherson indicated that he understands the need for strict limitations on students driving to school to avoid off-site parking. Nonetheless, due to the neighborhood inconvenience and safety issues at stake, the Hearing Examiner has included a recommended condition of approval that specifically addresses this point.

The second component would include programs to optimize circulation and parking, traffic control measures, traffic supervision by staff members, and education of those commuting to and from the campus. The TMP lists detailed steps such as using staff to actively manage drop-off and pick-up of students by directing parents to close gaps between cars; hiring an off-duty Montgomery

¹¹ Petitioner considers it unrealistic to expect that the school would continue to provide van transportation for more than 60 percent of its students as it grows, due to decreasing need for such transportation when the school moves closer to its target audience, and the “unwieldiness” of maintaining the 25 to 26 vehicles that would be required. TMP, Ex. 57(k), at 6.

County police officer to direct traffic if congestion occurs; starting the high school at 8:50 a.m. and the lower and middle schools at 9:00 a.m.; directing vehicles to form two lines in the driveway to shorten the queue if it begins to approach the MD 355 entrance; moving the drop-off and pick-up point farther along the driveway to shorten the queue; and having staff monitor the entrance and refuse to allow cars to enter the queue if doing so would result in a vehicle projecting into the driving lane of MD 355. See TMP at 7-8.

The third component would include scheduling non-classroom events or activities such as parent-teacher meetings, committee or board meetings and alumni activities outside the days and times of the school's peak traffic flows. Detailed items listed in the TMP include instructing faculty and staff to commute outside the schools' peak traffic hours whenever possible, and scheduling meetings and events outside the school's peak traffic hours whenever possible.

The TMP specifies that it would be managed by a staff person designated to act as Transportation Coordinator. This person would act as a liaison with other school personnel such as building and grounds staff, admissions office staff, the events coordinator, parents groups, van operators, the school registrar and the Community Liaison Committee.

The TMP lists a number of special events the school intends to hold, which are discussed in Part II.D. above.

The TMP also addresses the proposed summer program, which would have a much lower enrollment than the regular academic program (200 boys v. 600). This section refers to potential increases in summer enrollment, perhaps betraying a lack of understanding by the Petitioner of a basic point: any element of the school operation about which representations have been made during these proceedings cannot be changed without a modification request to the Board of Appeals. The TMP indicates that "if the traffic generated by an increased summer enrollment beings to approach the level that could cause off-campus back-ups or congestion, Avalon will take necessary measures including limiting enrollment to the number that experience shows can be adequately managed" with measures such as staggered starting and ending times for different programs, and using summer program

personnel to facilitate traffic flow. Ex. 57(k) at 10. Petitioner should be aware that any increase in summer program enrollment above the 200-student level represented during the public hearing would required prior approval from the Board of Appeals.

Finally, the TMP states that Petitioner will organize the Avalon School Community Liaison Committee ("CLC"), which will "periodically meet to discuss matters of mutual interest between the School and the surrounding neighborhood and larger community." Ex. 57(k) at 10. The TMP states that the CLC will be composed of, at a minimum, the following:

- A. School administration representative.
- B. Representative of the McKenzie family as long as it owns the adjacent property.
- C. Representative from the adjoining residential neighborhood.
- D. Representative from a Clarksburg community organization such as the Clarksburg Citizens' Association.
- E. School parent or board member.
- F. The People's Counsel as *ex officio* member.

Ex. 57(k) at 11.

The TMP specifies that the CLC shall have its first meeting before construction begins, and will meet at least twice a year for the first five years after its composition, and then at least annually until the requirement for a CLC is deleted by the Board of Appeals.

The recommended conditions of approval require a CLC under substantially the same terms proposed in the TMP. Where differences exist a condition of approval adopted by the Board of Appeals takes precedence.

H. Development Standards

As shown in the table on the next page, adapted from the Staff Report at 13, the proposed development would be consistent with applicable development standards.

Compliance with R-200 Zone Development Standards

Development Standard	Required	Proposed
Lot Area and Width (59-C-1.322(a)(b))		
Minimum Lot Area	20,000 sq. ft.	9.68 acres (448,668 sq. ft.)
Minimum Lot Width at Front Building Line	100 ft.	740 ft.
Minimum Lot Width at Prop. Street Line	25 ft.	747 ft.
Maximum Building Height	50 ft.	44 ft.
Maximum Lot Coverage (Net Lot Area)	25%	13.3 %
Minimum Building Setback		
From Street	40 ft.	40 ft.
Rear Yard	30 ft.	115 ft.
Side Yard	12 ft. (25 ft. combined)	80 ft.

I. Community Participation

The owners of the property adjacent to the subject site to the south on MD 355, Paul and Mary McKenzie, appeared at the hearing with their adult daughter, Patricia McKenzie. Patricia McKenzie testified that due to the slope of her parents' property and driveway, granting an easement for a deceleration lane would have a serious adverse impact on the property. As a result, she thinks it unlikely that the school would be able to build a deceleration lane across her parents' property. Assuming that is the case, Ms. McKenzie notes that the shoulder between the subject site and the corner is very narrow. She is concerned that any on-street parking or queuing would cause major traffic problems. It would disrupt traffic flow, and if people were to park on the street, there would be no safe way to walk to the school due to the lack of sidewalks. Ms. McKenzie acknowledged that Clarksburg has changed drastically, but stated that this area is still pretty much residential, except for the church, so the area is not conducive to street parking.

Mr. McKenzie voiced a concern about dust and mud during construction, emphasizing the importance of following county regulations.

Following the hearing, Patricia McKenzie submitted a letter with additional comments.¹² See Ex. 56. She explained that if her parents were to grant an easement for purposes of a sidewalk or deceleration lane, the sharp slope of the property would require an unsightly retaining wall facing MD

¹² The letter was written from Patricia McKenzie's perspective, and signed by her and her parents.

355. Ms. McKenzie noted that her parents, like many of the homeowners with property adjoining the subject site, have lived in their Clarksburg homes for 35-45 years. They have seen Clarksburg grow from “a rural, small town to an overgrown, poorly planned sprawl of disaster in a matter of two (2) years.” Ex. 56. Ms. McKenzie stated that the new development has resulted in bumper-to-bumper traffic passing her parents’ home during the 3:00 to 6:00 rush hour. She feels that any additional trips by parents or vans delivering students to the proposed school would have an impact. She also believes that parking is “more of an issue than the Avalon experts suggested.” Ms. McKenzie considers the suggestion of parking at the church across the street impractical, because of safety concerns: MD 355 is a busy state highway with a 40-mph speed limit, and may motorists crest the hill at the north end of the subject site at high speeds. As a result, she maintains, crossing MD 355 at this location is “treacherous.” Ex. 56.

Ms. McKenzie also argues that because there is no shoulder along MD 355 at this location, any vehicle queuing in the northbound lane would create unsafe driving conditions, especially if vehicles are already stopped in the southbound lane to enter the school. [The Hearing Examiner notes that southbound traffic would pull into the proposed left-turn lane to enter the school, so that stream of vehicles would be unlikely to block traffic.]

Assuming that the special exception is granted, Ms. McKenzie made three requests on her parents’ behalf: (i) that the site be watered down on a regular basis during construction; (II) that the builder be required to clean the windows on her parents’ home at 22805 Frederick Road monthly during construction (using a method acceptable to her parents); and (iii) that Petitioner be required to build a privacy fence on the boundary between its property and the McKenzie property, as offered during community meetings. See Ex. 56. These requests are reflected in the recommended conditions of approval.

The record also contains a letter from Kathie Hulley, President of the Clarksburg Civic Association. See Ex. 34. Ms. Hulley states that the Executive Committee of her organization endorses the proposed plan for The Avalon School. She states that some residents continue to have concerns

about the project, but “this is to be expected” for a project of this kind. Ms. Hulley notes that Petitioner has been sympathetic to her organization’s concerns regarding mass and scale of the buildings, and states that the campus “will be as compatible as it can be.” She expresses a hope that the traffic impact will be kept to a minimum, noting that the principal will be living next door and thus fully aware of impacts on the neighborhood. Ms. Hulley closes by stating that the Clarksburg Civic Association looks forward to its new neighborhood and the school’s participation in the future of Clarksburg. Ex. 34.

IV. SUMMARY OF HEARING

A. Applicant’s Case in Chief

1. Richard McPherson, President of the Petitioner. Tr. at 14 – 69.

Mr. McPherson is the President of the Avalon Education Group, and also resides in the existing house on the subject property.¹³ He testified that the Avalon Education Group has a headmaster who is in charge of day-to-day programs. These programs include, in addition to The Avalon School, which is for boys in grades 3 through 12, a girls’ school called Brookwood, a home-schooling group, and an adventure camp in West Virginia. Mr. McPherson was in charge of finding land on which to build the proposed school, and is also in charge of raising money to pay for it. He stated that the Petitioner agrees to be bound by any terms and conditions under which the proposed special exception may be granted.

Mr. McPherson stated that he was headmaster of The Heights School, in Potomac, when Tad Shields, the father of two boys at that school, spoke to him of a wish to start a new boys’ school up-County. Mr. McPherson and Mr. Shields incorporated Avalon Education Group in August 2002 and established a Board of Directors. The initial plan was to rent holding schools from Montgomery County Public Schools (“MCPS”). Holding schools are empty schools that MCPS uses on a rotating basis to temporarily house schools that are being renovated. This turned out to be disappointing, because it required more frequent moves from one building to another than Petitioner

¹³ Mr. McPherson has purchased a house at 12091 Shawney Lane, adjacent to the subject site, to serve as his residence after the existing house on the subject site is no longer available.

found desirable. At one point the school moved from Rockville further south, to Bethesda, and feared losing enrollment. They created a transportation plan with vans to bring students down from up-County locations, and found that their enrollment continued to increase. In addition, using vans resulted in having no car-pool problems, and with the teachers driving the vans, it saves wear and tear on their cars.

Mr. McPherson explained that the Petitioner decided to construct its own building both for stability and to improve its facilities. At its current location, for example, in an elementary school, there is no gymnasium, so the school has had to rent one nearby for the basketball team. Mr. McPherson noted that The Avalon School will be required to leave its current location in about December 2008/January 2009. This places considerable time pressure on the proposal to construct a new school.

Mr. McPherson described Petitioner's educational philosophy as follows:

1. Parents are the primary educator, so any successful education involves a true relationship between home and school.
2. Religion is taught in accordance with the new catechism of the Catholic Church.
3. Educational programs should be single-sex.
4. A school should have a content-rich, traditional curriculum, with small class settings.
5. A school should cultivate a spirit of adventure in its students through activities such as field trips, creek walks, building forts and putting on musicals.

At the subject site, Petitioner would like to eventually have a school with 600 students from third through 12th grade. Staff would consist of a maximum of 70 people, including teachers, administrators and other employees. The academic year would operate from September through the first week of June, five days a week. Students would arrive no earlier than 7:30 a.m., and the last activities would generally end by 6:00 p.m. Weekend activities would take place about twice a month, with weeknight activities about four times a month.

With regard to the design of the proposed school, Mr. McPherson stated that the Petitioner wanted to use brick and stone for a traditional look. The original plans called for a single

large building. That was changed to a series of smaller building in response to the desire (expressed by Technical Staff, presumably, based on the applicable master plan) to retain a residential character along this portion of Rte. 355.

Turning to parking, Mr. McPherson stated that one thing the school has done to reduce parking demand is to separate what used to be a school-wide back-to-school cookout into two cookouts, divided by age group. He suggested that if needed, they can divide it into three cookouts: one each for the lower school (grades 3 through 5), middle school (grades 6 through 8) and high school (grades 9 through 12). Mr. McPherson noted that the school has written permission from the pastor of the church across the street to use the church's lot for parking overflow during big events, which he estimated would occur about ten times a year. See Ex. 41. This arrangement, not surprisingly, is reciprocal.

Mr. McPherson agreed to a condition that would require all parking for school events between 7:30 a.m. and 6:00 p.m. to take place on site, to avoid any staff or student parking on neighborhood streets. See Tr. at 66. [Later in the hearing a variation on this limitation was discussed, to specify no street parking at any time, and no off-site parking except for special events. See Tr. at 220-21.]

Mr. McPherson stated that two of the school's annual events, the Christmas party and graduation, would likely generate enough vehicles that overflow parking at the church would not be sufficient. For those events, the school hopes to be able to use the parking lots at Clarksburg High School and shuttle people from there to the subject property. [Note: After the hearing, a letter was submitted into the record from the principal of Clarksburg High School, which permits The Avalon School to use its lot for parking on two dates, June 8, 2008 from 3:00 p.m. to 7:00 p.m., and December 14, 2008 from 3:00 p.m. to 7:00 p.m.]

Mr. McPherson testified that organized outdoor activities would take place off-site, at rented fields, because the subject site would not have any playing fields. The school's philosophy encourages outdoor play that interacts with nature, so no man-made playground equipment is planned.

When questioned by the Hearing Examiner, Mr. McPherson stated that outdoor play, including informal ball games, would take place in the courtyard area between the buildings. The school schedule gives the boys 15-minute breaks between every two classes, in addition to the lunch break, "to get them outside running around." Tr. at 58. That results in a morning break, lunch, and an afternoon break. The whole lower school, about 100 students at full enrollment, has breaks at the same time.

Mr. McPherson anticipates that until the proposed Administration Building is constructed, students will use the trees on the future site of that building to climb on. He expects that they will play tag and similar games, or maybe kick a soccer ball around, in the courtyard area between the buildings. At some point, the school may want to plant some large climbing trees in the courtyard area. The gymnasium would also be available for recess periods, so some students could be indoors. Mr. McPherson does not anticipate large numbers of students playing in the forest conservation areas near the perimeter of the site. He indicated that the staff would prefer to keep the students in the courtyard, where they can keep track of them.

Mr. McPherson confirmed that The Avalon School runs a summer camp, which would have a maximum enrollment of 200 boys. He also confirmed that staffing for the summer camp would not exceed the maximum of 70 staff during the school year. See Tr. a6 64-65.

Finally, Mr. McPherson opined, from his perspective as a person living in the neighborhood, that the proposed school can be operated on the subject site in harmony with the character of the neighborhood. He described it as a beautiful school, stating that it will add to the Clarksburg community with its beautiful new houses. Mr. McPherson stated that Petitioner wants to be part of the community in Clarksburg, and that he will work very hard to make sure the school is a good neighbor. For instance, the school intends to notify the neighbors by letter of the dates for big school events. He maintained that unless one dislikes the sound of little boys laughing, the school will not create any objectionable noise or activity.

2. Melanie Hennigan, architect. Tr. at 70 – 108.

Ms. Hennigan was designated an expert in architecture. She described the process of designing the buildings for the proposed school, noting that one of the first things her firm examined was how to take the program as proposed and make it relate well with the surrounding community. They went out and visited the neighborhood, taking photographs, and studied those in developing concepts that “would be in keeping with the character of the place.” Tr. at 74. She noted that it would have been more economical to put all the functions in one building, or perhaps the gymnasium in one building and everything else in a second building. However, that would have resulted in a very large building that would have been overpowering for the site. They felt that breaking the buildings down into a series of pavilion buildings, longer in scale, would be more in keeping with the surrounding community. This results in two-story buildings for the academic building and the administration building, and oversized one-story buildings for the dining hall and gymnasium. Creating a series of buildings also allowed the architects to arrange the buildings in a way that screened the parking, so that the main view of the campus from Frederick Road would be a large green lawn surrounded by buildings. The driveway and parking are proposed in a U-shaped configuration that pulls much of the parking deeper into the site, screened by trees and landscaping. Ms. Hennigan described the open lawn area as an amenity for the community, an “outdoor room” that brings life to the site and allows people to appreciate the beauty of the buildings. She noted that out of sensitivity to the immediate neighbors, all of the buildings were placed far away from the property lines, creating an ample buffer. Ms. Hennigan noted that the forest conservation area creates even more of a buffer, and one that would not change over time.

Ms. Hennigan reviewed the proposed site plan and building elevations. She noted that the narrower side of the classroom building is proposed to face the street, putting a residential-scale width facing the street. Ms. Hennigan described the scale of the buildings as very sensitive to their surroundings. See Tr. at 84.

Turning to signage, Ms. Hennigan noted that the school sign is proposed to be near the vehicular entrance and modest in size, about eight feet by five feet, in keeping with the 40 square feet permitting in the Zoning Ordinance. She stated that the sign would have modest illumination.

Ms. Hennigan also described what is identified on the plan as a “project feature wall,” prominently located at the front of the lawn area. She explained that this would be a retaining wall, built into the slope of the site so that the lawn area can be flat. From the front of the site, the wall would be visible as a stone wall built into ground. Looking out from the lawn, only the top of the wall would be visible, level with the grass (or slightly above it, as shown on the Landscape Plan Details and Notes, Ex. 57(h)).

Ms. Hennigan opined that the proposed school would be in harmony with the surrounding neighborhood. She also noted that the school would be an addition to the community, giving people another choice of schools. Ms. Hennigan opined that the buildings would be architecturally compatible with the character of the surrounding community because of their heights, the shape of the gable ends, the shape of the roofs, the building proportions, the window proportions and the stone bases, all of which are residential elements the community would find very familiar. See Tr. at 103-104. Examining the neighborhood context, Ms. Hennigan observed that Frederick Road has a mix of uses and architecture. She stated that within a 10 to 20-miles radius of the subject site one finds a great deal of red brick, stone, and pitched roofs with shingles, all proposed for this project.

Comparing the size of the buildings proposed for this site with existing non-residential buildings, Ms. Hennigan noted that because the school functions have been split up into four buildings, these buildings would be much smaller than the public schools in the area. She estimated that the church across the street is probably one and half to two times the size of the proposed gymnasium and dining hall, noting that it is not one of the larger churches in the area. Ms. Hennigan observed that many residences in the area are greater in length than the 78-foot width of the classroom building where it would face the street.

3. Stephen Petersen, traffic engineer. Tr. at 110 – 164.

Mr. Petersen was designated an expert in transportation planning and traffic engineering. He described the traffic study that his firm conducted in accordance with the LATR Guidelines. Mr. Petersen notes that the traffic counts were done in May 2006, at a time when schools were in session. Background traffic was added to those counts, for traffic expected from developments that have been approved but not yet built. Anticipated traffic from the proposed school was then added to the combination of existing and background traffic.

Mr. Petersen observed that the proposed school would add only a modest number of trips to the road system during the peak hour for existing traffic, because traffic peaks early in Clarksburg and school starts late. Mr. Petersen stated that the “street peak” was different at each of the intersections studied, but a composite of the morning peak hour was about 7:15 to 8:15. The peak hour for morning traffic to the proposed school is estimated to be between 8:00 and 9:00 a.m., given that classes are scheduled to start at 8:50 a.m. School traffic is expected to begin about 8:00 a.m. and gradually increase to a peak between 8:30 and 8:45, with the remainder between 8:45 and 9:00. In the afternoon, Mr. Petersen observed, the peak hour for school traffic is between 3:00 and 4:00, which is earlier than the peak hour for existing traffic in the area, about 4:30 to 5:30. See Tr. at 114.

Based on the results of his traffic study, Mr. Petersen concluded that traffic generated by the proposed school can be accommodated during the street peak hour at all of the local intersections except one: Gateway Center Drive and MD Rte. 121, which is currently being reconstructed. He noted that the current reconstruction will not provide the lane markings that are needed to unload the industrial area on the south leg of Gateway Center Drive, but the developers in two nearby residential rezoning cases have made commitments to provide those markings after the intersection is built. Once the pavement markings are modified, Mr. Petersen opined, the traffic expected from the Avalon School will no longer cause critical lane volume (“CLV”) at that intersection to exceed the congestion standard for the area.

The Avalon School has the potential to adversely affect one other intersection, MD 355 and Stringtown Road, which is the closest signalized intersection to the school. If traffic generated by the school reaches 420 trips during the school's peak hour, CLV at that intersection will reach the congestion standard for the area during that hour. Mr. Petersen was quick to explain that Avalon School traffic would not cause CLV to reach the congestion standard during the street peak hour, 7:15 to 8:15 a.m., but only during the peak hour for school traffic, 8:00 to 9:00 a.m. See Tr. at 115. Mr. Petersen also explained that based on The Avalon School's current traffic generation rate, which includes a vehicle occupancy rate of about 2.5 students per vehicle due to extensive use of vans, with 600 students the school would generate 383 trips during its peak hour. Technical Staff expressed a concern that the school might not achieve the same vehicle occupancy rate as it grows, if the levels of carpooling and vanpooling drop at the subject site. [Note: This expectation is supported by Petitioner's Transportation Management Plan, which states that Petitioner does not consider it realistic to maintain a rate of vanpooling over 60 percent as the school grows. See Ex. 57(k) at 6.] Staff also required Petitioner to assume that the State Highway Administration would prohibit left turns out of the site, due to a vertical crest in the road to the south. This would force all of the exiting traffic to go north and pass through the intersection of MD 355 and Stringtown Road. With a lower vehicle occupancy rate than The Avalon School currently enjoys, plus a no-right-turn restriction on exiting traffic, the school would be projected to generate 420 trips during its peak hour, causing CLV at the intersection of MD 355 and Stringtown Road to equal the congestion standard for the area. Any traffic generation greater than 420 trips in the school's peak hour would cause that intersection to exceed the congestion standard.

Mr. Petersen stated that based on his informal conversations with SHA officials, if the school provides a police officer on MD 355 in front of the site to direct traffic during the school's morning and afternoon peak hours, he expects SHA will not restrict left turns out of the site. See Tr. at 124, 131. Mr. Petersen expects to be able to get something from SHA to this effect in writing in time for subdivision review.

In response to a question from Ms. McKenzie, Mr. Petersen stated that about 68 percent of traffic coming to the subject site is expected to come from the north, and about 32 percent from the south.

The other significant traffic issue in this case is the need for deceleration and acceleration lanes for cars entering and exiting the site. Mr. Petersen explained that when the property at the corner of MD 355 and Shawney Lane, immediately south of the subject site, was developed, the owners were required to dedicate street frontage for road purposes. Similarly, if the proposed school project goes forward, Petitioner will be required to make a dedication of some of its street frontage for road purposes (adding four feet of pavement, for a total of 18 feet from the center line). Between the school property and the corner property is the McKenzie property, which was developed without any dedication requirement, so the property line is much closer to the existing roadway. A similar situation exists on the north side of the subject site.

The proposed school cannot be built without access permits from the SHA, because MD 355 is a state road. SHA has asked The Avalon School to construct an acceleration lane for the inbound driveway and a deceleration lane for the outbound driveway. Those lanes cannot be built to the standard 250-foot length unless Petitioner is able to purchase land from both of the adjoining properties. Mr. Petersen testified that if negotiations to make those purchases are not successful, he expects that the SHA will grant access permits based on acceleration and deceleration lanes using the amount of space available within the subject property. See Tr. at 142.

Mr. Petersen characterized the SHA's direction to install acceleration and deceleration lanes at this site as an effort to upgrade a state roadway. He noted that MD 355 has many commercial driveways without acceleration or deceleration lanes at all, so these lanes are not typical. Mr. Petersen opined that the proposed school could operate safely without such lanes. He also opined that the space within the subject site would be sufficient to construct safe acceleration and deceleration lanes. See Tr. at 147-48. Mr. Petersen suggested that most drivers would not use the full 250 feet of a deceleration lane to enter a school – they would use about the last 100 feet. The subject property has

room for a 90-foot deceleration lane approaching the proposed entrance driveway, which Mr. Petersen believes would be enough for drivers to make a relatively fast turn into the site. During the morning, about 70 percent of the traffic on MD 355 is heading south and only 30 percent north. With the relatively light northbound traffic, Mr. Petersen believes that cars could enter the subject site safely using a 90-foot deceleration lane. In the afternoon, most of the school traffic would be over before the heavy rush hour on the street begins. As a result, Mr. Petersen believes that traffic would be able to safely exit the site with the acceleration lane the Petitioner could build on its property. See Tr. at 148. He does not expect “any serious safety problem given that . . . when you’re exiting from the driveway you clearly have to yield to all other traffic that’s on the road.” Tr. at 149.

For left turns into the site, Mr. Petersen testified, the Petitioner would be required to dedicate enough land across its frontage to widen the road and add a southbound left-turn lane into the site, at Petitioner’s cost.

In response to questions from Ms. McKenzie, Mr. Petersen explained that the site plan is designed with the drop-off point for students at the back of the property, by the administration building. He noted that the proposed conditions of approval prohibit any queuing of vehicles on MD 355, so if morning drop-off were to start creating a queue on 355, the school would have to move the drop-off point far enough into the site to avoid a queue. Mr. Petersen estimated that there is room for approximately 20 cars along the drive between the site entrance and the drop-off point. He stated that morning drop-off is unlikely to cause a queuing problem because parents drop off and leave quickly. The afternoon pick-up is a more critical time. Mr. Petersen stated that the pick-up point should probably be on the east side of the site, near the classroom building, which would allow a queue of 33 cars on site. Based on current operations, Mr. Petersen believes that will be sufficient space, even with an enrollment of 600, because a fair number of students are not picked up by individual cars, and many students participate in after-school activities, so pick-up is not as concentrated as it is at many schools. Mr. Petersen stated, in addition, that the drive is planned to be 22 feet wide, which would provide enough room for two lanes of traffic, if necessary to avoid off-site queuing. Mr. Petersen acknowledged

that in light of traffic speeds on MD 355, off-site queuing would be a problem; it could block traffic completely in the single north-bound lane, unless cars were standing in the deceleration lane or the shoulder. See Tr. at 158-59.

Mr. McPherson interjected that with a current enrollment of 239 students, The Avalon School experiences a queue of about seven or eight cars at pick-up. See Tr. at 159-60. To estimate future queuing needs, he said, they quadrupled that number – 33 is slightly more than four times the current peak queue of eight cars. Mr. McPherson stated that when he was with The Heights School, they found the most effective way to control pick-up queuing was to spread out departure times with lots of after-school activities. The Avalon School does not currently have a large enough or old enough student body for a lot of after-school activities. Mr. McPherson expects to have proportionally fewer cars as the enrollment increases, because of increasing after-school activities. Currently, Avalon School students are permitted to stay after school to get extra help from teachers, go to the library, or play on the basketball courts. Mr. McPherson indicated that those opportunities would be available at the proposed site, as well.

Mr. Petersen opined that the transportation network surrounding the subject site is adequate to accommodate the traffic that would be generated; that site circulation would be safe, adequate and efficient, particularly in relation to avoiding queuing on MD 355; and that on-site parking would be adequate, provided that constraints are placed on student parking to limit the number of vehicles. See Tr. at 163. He opined that the proposed use would have no effect on pedestrian safety in the area, nor would it cause any kind of nuisance because of traffic. He also reiterated that the school can be operated in a safe manner with roadway improvements limited to the site frontage. See Tr. at 164.

4. Paul Sun, landscape architect. Tr. at 173 – 214.

Mr. Sun was designated an expert in landscape architecture and site planning, over the objection of the People's Counsel, Martin Klauber. Mr. Klauber observed that the submitted photometric plan, which Mr. Sun prepared, was not like any photometric plan he had ever seen. He

felt that this demonstrated Mr. Sun's lack of expertise regarding Montgomery County requirements. The Hearing Examiner was persuaded by Mr. Sun's resume and description of experience that he should be considered an expert, and invited Mr. Klauber to impeach his credibility on cross-examination. His testimony, however, did not always demonstrate a high level of familiarity with the materials, particularly with regard to lighting.

Mr. Sun provided a brief description of existing conditions on the subject property, noting that it is approximately one mile south of Clarksburg Town Center, 350 feet from Shawney Lane and roughly rectangular in shape, with a change in elevation of about 50 feet from the rear of the site to its MD 355 frontage. The property is currently developed with a single-family residence, a greenhouse and a circular driveway. Five specimen trees have been identified on the site. The site is located in a special protection area for the Little Seneca Creek watershed, resulting in a limitation on impervious area of 22 to 29 percent. The proposed site plan provides for four buildings with a total of 94,000 square feet and a one-way loop road system, entering at the south end of the site and exiting at the north. Mr. Sun explained that the one-way system with angle parking reduces impervious surface. He stated that Technical Staff supports the proposed site plan, which shows 28.7 percent of the site in impervious area. Mr. Sun noted that the 28.7 percent impervious area includes the proposed widening of MD 355 along the site frontage by 16 feet, and also includes the off-site widening for acceleration and deceleration lanes and sidewalks that may or may not be possible, depending on whether the land can be acquired. See Tr. at 186.

Mr. Sun stated that Petitioner proposes a multi-tier stormwater treatment system using bio retention devices, storm filters, swales and an underground storage facility. In addition, Petitioner proposes to use pervious paving for the parking stalls, to help with water quality. The record includes a letter from the Department of Permitting Services stating its approval for the concept stormwater management plan.

Mr. Sun testified that Petitioner is required to comply with forest conservation regulations by planting 15 percent of the site, or 1.65 acres, in forest. This is proposed to be accomplished with a

1.65-acre forest conservation area at the rear of the property. Mr. Sun indicated that this location was chosen to help buffer adjacent homes to the east. There are some trees in the forest conservation area now, but not enough to qualify as forest. Mr. Sun explained that a new forested area would be created by planting seedlings or one-gallon trees in a very tight spacing. He stated that Technical Staff provides detailed guidance as to the types of trees to be planted. Once the planting is done, Petitioner would have an obligation, in connection with the forest conservation easement, to perform an inspection at the end of two years and replace plants that did not survive. Mr. Sun noted that additional landscaping is also proposed around the gymnasium, to provide screening for the adjacent neighbors.

Turning to lighting, Mr. Sun testified that the lighting plan proposes 19 pole lights for the parking areas, on 18-foot poles with shoe-box type lights pointing down. Each one would have a 400-watt light. Mr. Sun explained that these lights would provide light for vehicles circulating through the site, and also for the walkways on site. Accent lighting is proposed on the building walls, mounted at the floor grade of the second floor. These would have only 39-watt light bulbs, intended to provide general lighting in the area of the buildings. See Tr. at 203. In addition, bollard lights are proposed along the pathways, to help people find their way. Mr. Sun explained that the representations of the various lights on the submitted Lighting Plan have circles to show how far the illumination would extend. Due to a lack of clarity on the Lighting Plan concerning which types of lights are proposed where, and what levels of illumination would result, as well as the lack of any information about sign lighting, Petitioner agreed to provide a revised, more readable lighting plan after the hearing. Petitioner also agreed to consider whether the height of the pole lights could safely be reduced, and to consider whether any of the exterior lights could be turned off at a certain time of night.

Mr. Sun testified that the proposed project would be adequately served by public utilities, noting that sewer service would be available via an extension to a nearby intersection, and that there is a water line available for connection in MD 355.

Mr. Sun noted that the Zoning Code requires one parking space for every staff member and sufficient space for loading and unloading of students. He opined that the 80 parking spaces

proposed would be sufficient to satisfy these requirements. Mr. Sun noted that the proposed buildings would satisfy the setback, lot width, lot coverage and building height restrictions for the R-200 Zone. See Tr. at 213.

Finally, Mr. Sun opined that the proposed use would have no detrimental effects on any adjoining properties.

B. Community Testimony

1. Patricia A. McKenzie, Tr. at 165 – 167.

Ms. McKenzie's parents live immediately south of the subject property on MD 355. She noted that the letter from SHA in the record at the time of the hearing required acceleration and deceleration lanes, and stated that due to the slope of her parents' property and driveway, granting an easement for a deceleration lane would have a serious adverse impact on the property. As a result, she thinks it unlikely that the school would be able to build a deceleration lane across her parents' property. Assuming that is the case, Ms. McKenzie notes that the shoulder between the subject site and the corner is very narrow. She is concerned that any on-street parking or queuing would cause major traffic problems. It would disrupt traffic flow, plus if people park on the street, there would be no safe way to walk to the school due to a lack of sidewalks. Ms. McKenzie acknowledged that Clarksburg has changed drastically, but stated that this area is still pretty much residential, except for the church, so the area is not conducive to street parking.

2. Paul S. McKenzie, Tr. at 168 - 172.

Mr. McKenzie's home abuts the subject property to the north. He testified that he is a building contractor and is familiar with the dust and other problems that construction projects can cause. He would like to avoid dust and mud on the streets, but feels there should not be a problem as long as the contractors abide by county regulations. Other than that, Mr. McKenzie stated his intention to be a good neighbor and help with the proposed project as much as he can.

C. People's Counsel

The People's Counsel for Montgomery County, Martin Klauber, participated in the questioning of witnesses and discussion of procedural matters during the hearing.

V. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context, because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (see Code §59-G-1.21(a)), the Hearing Examiner concludes that, with the extensive conditions of approval recommended at the close of this report, the proposed special exception would satisfy the specific and general requirements for the use.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations." Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are "physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site." *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a private educational institution. Characteristics of the

proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Physical and operational characteristics associated with a private educational institution include buildings adequate to house the students and activities; parking facilities; lighting; educational activities and events during standard operating hours; a limited number of special events; noise from outdoor activities; students, faculty and support staff on site; and traffic associated with transporting students and staff. In the present case, Technical Staff identified the buildings, vehicular activity and lighting associated with the traffic and movement of people as inherent adverse effects. See Staff Report at 5. Staff identified no non-inherent adverse effects, concluding that the proposed use would be compatible with the neighborhood based on screening and the location, size and scale of the buildings.

The Hearing Examiner considers many characteristics of the proposed special exception to be inherent. The number of buildings is not atypical for a school of this size, and is readily accommodated by the size of the site. The size and scale of the buildings is softened by residential architectural materials and elements, as well as a large, central open space and perimeter landscaping. The parking facilities are well designed to avoid visual intrusion, and there is nothing unusual in the one-way driveway design serving both as a driving route and as drop-off and pick-up areas. The proposed lighting is not unusual for a private educational institution, nor is there any evidence that it would be intrusive. Events during standard operating hours are typical of a private educational institution. Special events in this case are perhaps slightly more frequent than at some private educational institutions, but as described in the written submissions and testimony, they do not rise to a level that can fairly be considered non-inherent; it is typical for a private educational institution to have

events of the types Petitioner proposes. Noise from outdoor activities at this site may be lower than at some private educational institutions because this site proposes no formal outdoor sports activities. Other than vehicular activity, the only outdoor activities proposed on site are children playing, which is clearly typical of the use. The number of students and staff proposed, although fairly large, is not unusual for a private educational institution, and the population density is well within the density anticipated in the specific conditions for the use.

The Hearing Examiner observes, however, that characteristics that might be considered inherent under other circumstances may be rendered non-inherent by unusual site conditions, or by their size or scale. In the present case, the large projected enrollment combines with the site's location on a high-speed, two-lane road to create potential traffic impacts that the Hearing Examiner considers non-inherent. In addition, the slim number of parking spaces relative to the number of students and staff, combined with the lack of sidewalks and available street parking in the area, creates a potential adverse neighborhood impact and a safety issue if on-site parking proves inadequate. The Hearing Examiner considers this potential adverse effect to be non-inherent – providing only ten spaces more than the number of staff with a student body of 600 cannot be considered typical. Finally, the Hearing Examiner does not consider any summer program to be an inherent adverse effect, because many private educational institutions do not have them. This conclusion is bolstered by the fact that the specific standards for the use require special findings if a proposed private educational institution intends to offer a summer program, highlighting that this is not routine. Each of these non-inherent characteristics will be discussed in turn.

Anecdotal evidence suggests that MD 355 at this location suffers from congestion during the afternoon peak period. Petitioner's traffic study indicates, however, that all of the four closest intersections have existing traffic well below the congestion standard for the Clarksburg Policy Area. The study also indicates that with background traffic from already-approved development, plus the proposed school, each of these intersections would continue to operate below the congestion standard during the morning and evening peak hours, albeit in some cases quite close to the standard. The

evidence establishes that the most significant risk of the proposed special exception causing congestion that county standards deem unacceptable is not during the peak hours for street traffic. It is, instead, during the peak hours for school traffic, which are later than the street peak in the morning and earlier in the afternoon. During the morning peak hour, in particular, if the school were to generate more than 420 trips in and out, CLVs at the closest intersection to the north (MD 355 and Stringtown Road) would exceed the congestion standard for the area. Petitioner has suggested that it would prevent this from occurring through its Transportation Management Plan, which encourages vanpooling, carpooling, and other trip-reduction and trip-dispersal methods. Petitioner has also offered to hire an off-duty Montgomery County police officer, if necessary, to direct traffic at its driveways. Petitioner hopes that a promise to provide traffic control will persuade SHA to lift the right-turn-only restriction it currently calls for at the proposed exit, which would ease the pressure on intersections to the north, especially MD 355 at Stringtown Road.

Petitioner's unrefuted evidence suggests that assiduous implementation of the TMP and hiring a police officer to direct traffic would be sufficient to avoid pushing any nearby intersections over the congestion standard during the school's peak hours. As a result, the Hearing Examiner does not consider the potential for adverse traffic impacts sufficient to warrant denial of the application, provided that the conditions of approval require strict adherence to the 420-trip limit and full implementation of the TMP. The recommended conditions of approval have been drafted with this end in mind. The recommended conditions also reserve to the Board of Appeals the right to impose additional conditions related to traffic, including a lower cap on enrollment, if future evidence, such as complaints by neighbors, so warrants.

Due at least in part to the impervious area limitation imposed in connection with the Clarksburg Special Protection Area, Petitioner has proposed only 80 parking spaces for a school that is intended to have 70 staff members and 600 students, including high school students of driving age. Currently, the school allows sophomores, juniors and seniors to drive to school. Obviously that would not be possible at the subject site. The TMP lists restrictions on the student eligibility to drive to school

as part of its analysis in staying within the 420-trip limit, recognizing that this is an issue of some significance. See Ex. 57(k) at 7. Overflow parking at special events also presents a risk of adverse neighborhood impact. The Hearing Examiner is not persuaded by Petitioner's view that 80 parking spaces will be enough at most of its special events, even when attendance reaches 250 people. However, as discussed in Part II.D. above, the Hearing Examiner finds that there are several options available to Petitioner to deal with overflow parking at special events, including a reciprocal shared parking arrangement with the church across the street, subject to a limit on church parking at the subject site of once a month; parking at Clarksburg High School when permitted; identifying commercial parking available for a fee, with a shuttle service; and modifying the events themselves to reduce attendance. Accordingly, the Hearing Examiner concludes that with the recommended conditions of approval, including a clear prohibition of on-street parking, the risk of adverse impacts due to parking does not justify denial of the application.

Petitioner proposes a summer program with a much smaller enrollment than during the school year, only 200 students. The traffic and level of activity on the site would, correspondingly, be less intense than during the school year. Provided that this level of activity does not increase, no adverse impacts can be expected that would justify denial of the application. It should be reiterated, however, that any increase in summer program enrollment above the 200-student level described at the hearing would require prior approval from the Board of Appeals in the form of a modification of the special exception.

For all of the reasons stated above and in the following sections, the Hearing Examiner concludes, based on a preponderance of the evidence, that the inherent and non-inherent adverse effects of the proposed special exception do not justify denial of the application.

B. Specific Standards

The specific standards for a private educational institution are found in § 59-G-2.19. As outlined below, the Technical Staff report and Petitioner's written evidence and testimony provide sufficient

evidence that with the extensive conditions of approval recommended at the close of this report, the proposed use would be consistent with these specific standards.

Section 59-G-2.19. Educational institutions, private.

(a) **Generally.** A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:

- (1) the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;

Conclusion: With the recommended conditions of approval, The Avalon School would not create any conditions that rise to the level of a nuisance. Traffic impacts can be kept to an acceptable level by taking whatever steps are necessary (i) to keep trips in and out during the school's peak hours to 420, and (ii) to prevent vehicle queues from extending from the site onto MD 355. Potential parking impacts can be avoided entirely by enforcing the prohibition of on-street parking and making alternative arrangements for overflow parking as described in Part II.D above. There is no evidence that 600 students on a campus of this size would create levels of noise or activity that would be objectionable for the neighbors, particularly with significant distances between the active portions of the site and the closest homes, extensive landscape buffering and forestation, and no outdoor athletic fields on site. Any potential for objectionable levels of noise or outdoor activity would be controlled by a recommended condition of approval requiring that outdoor play or exercise periods be scheduled at separate times for the lower, middle and upper schools.

- (2) except for buildings and additions thereto completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;

Conclusion: The subject site measures approximately 9.68 acres. The proposed buildings would necessarily be larger than the residential buildings in the surrounding area. They would be significantly smaller than the local public school buildings, however, and some of the buildings would

be smaller than the church across the street. All of the buildings would incorporate residential elements and materials such as red brick and sloped, shingle roofs that are common in the area. These elements support the undisputed professional opinion of Petitioner's architect that the proposed buildings would be architecturally compatible with other buildings in the surrounding neighborhood, which the Hearing Examiner finds persuasive.

- (3) the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and

Conclusion: The evidence supports a conclusion that the proposed school would not, in and of itself or in combination with other existing uses such as the nearby residences, schools and churches, affect adversely or change the present character or future development of the surrounding residential community. This is a neighborhood with a mix of institutional and residential uses whose character is currently undergoing significant change as Clarksburg changes from a rural community to a suburban one. The proposed school would be part of that change, but would not be a cause of it – the causes began some time ago and are much larger than this proposal.

- (4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:

- a. **Density**—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:
 1. Traffic patterns, including:
 - a) Impact of increased traffic on residential streets;
 - b) Proximity to arterial roads and major highways;
 - c) Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;
 - d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and
 2. Noise or type of physical activity;

3. Character, percentage, and density of existing development and zoning in the community;
4. Topography of the land to be used for the special exception; and
5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.

Conclusion: Petitioner proposes a density of approximately 58 students per acre, significantly below the threshold of 87 that requires special justification. As discussed in detail in Part II.G. above, the Hearing Examiner concludes that with the extensive conditions of approval recommended at the close of this report, the special exception may be granted with a maximum enrollment of 600 students without causing objectionable traffic impacts. This conclusion holds true as well for noise and physical activity, supported by the size of the site, significant distance between the active areas of the site and the closest residential neighbors (the closest home, the McKenzie residence, is over 200 feet from the gymnasium and 160 feet from the grassy area in front of the dining hall), extensive forested and landscape buffering and the provisions of the Transportation Management Plan.

- b. **Buffer**—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.

Conclusion: Petitioner does not propose any formal outdoor sports facilities on the site. Outdoor recreation, consisting of children playing, including potential informal sports activities, would take place in the grassy area between the buildings for short periods of time during recess periods and lunch, and perhaps after school. Perimeter landscape buffering would shield nearby residents from many of the impacts of this activity. To ensure that the noise and level of activity is not overwhelming, a

recommended condition of approval requires that scheduled outdoor play and exercise periods take place at different times for each of the lower, middle and upper schools.

- (b) If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.

The Board may limit the number of participants and frequency of events authorized in this section.

Conclusion: Petitioner has indicated no intention to allow its facilities to be used by others by lease or other arrangement for the type of programs outlined above. Petitioner intends to operate a summer program on the site with a maximum of 200 students, no more than the 70 staff members permitted during the school year, and hours similar to those during the academic year. With fewer students, the same number of staff and similar hours, the evidence supports a conclusion that the summer program would have no unacceptable adverse impacts on the community. The submitted Transportation Management Plan, Exhibit 57(k), presents numerous traffic management strategies that would be available during the summer as well as the school year.

- (c) Programs Existing before April 22, 2002.
 - (1) Where previously approved by the Board, a private educational institution may continue the operation of [accessory programs and camps]...
 - (2) Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs . . .

Conclusion: Not applicable.

(d) Site plan.

- (1) In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all

buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.

- (2) No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.

Conclusion: Petitioner has submitted a Site Plan, Exhibit 57(i), and several supporting maps and other documentation which, together, depict all of the features described above.

- (e) **Exemptions.** The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. . .

Conclusion: Not applicable.

- (f) **Nonconforming uses.** Nothing in this chapter shall prevent any existing private educational institution . . .

Conclusion: Not applicable.

(g) Public Buildings.

- (1) A special exception is not required for any private educational institution that is located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County.
- (2) However, site plan review under Division 59-D-3 is required for:
 - (i) construction of a private educational institution on vacant land owned or leased by Montgomery County; or
 - (ii) any cumulative increase that is greater than . . .

Conclusion: Not applicable.

- (h) **Applications filed before May 6, 2002.** Any application filed before May 6, 2002 . . .

Conclusion: Not applicable.

C. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

Conclusion: A private educational institution is a permitted use in the R-200 Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use would comply with the standards and requirements set forth for the use in Code §59-G-2.19, as detailed in Part IV.B. above.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The evidence supports Technical Staff's conclusion that the proposed use would be consistent with the land use recommendations of the *1994 Clarksburg Master Plan*, as discussed in Part II.B. above. The proposed use would be compatible with the surrounding neighborhood based on its design, the size of the site, significant distances between the active areas of the site and the closest neighbors, and proposed buffering.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed

new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

Conclusion: With the careful adherence to the conditions of approval recommended in this report, the proposed use would be in harmony with the general character of the neighborhood. It would increase the daytime population density, but the size of the site is large enough to accommodate the students and staff while providing substantial distance, forest and landscape buffers. The design, scale and bulk of the proposed buildings would be architecturally compatible with the neighborhood and would be mitigated by distance and landscape buffering. The intensity and character of activity includes only limited periods of outdoor activity, with most activity taking place indoors. Traffic and parking controls in the Transportation Management Plan and the recommended conditions of approval should, if fully implemented, prevent any significant adverse effects related to traffic or parking. In the event that these controls fail to prevent significant adverse effects, the recommended conditions of approval reserve jurisdiction in the Board of Appeals to impose additional conditions related to traffic and parking, including reducing enrollment, if future evidence so warrants.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed use would not be detrimental to the use, peaceful enjoyment and economic value of surrounding properties or the general neighborhood.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with the recommended conditions, the proposed special exception would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses

sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: The general neighborhood of the subject has many residences, but is described by Technical Staff as having a mixed-use character, with residential, commercial and institutional uses. See Staff Report at 8. Technical Staff reports one special exception use in the general neighborhood, a commercial nursery of long standing. The evidence supports the conclusion that the proposed special exception would not increase the intensity or scope of special exception uses sufficiently to affect the area adversely or alter the residential element of its nature.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that with the recommended conditions, the proposed special exception would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The evidence supports the conclusion that the subject property would continue to be served by adequate public facilities with the proposed use and would have no significant adverse effect on public facilities, provided that the recommended conditions of approval and the provisions of the Transportation Management Plan are fully implemented.

- (i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: Subdivision approval would be required. The traffic study and testimony demonstrate that with the recommended conditions of approval, the proposed use would satisfy Local Area Transportation Review requirements. Policy Area Transportation Review requirements no longer apply, per the current AGP Policy Element.

- (ii) With regard to findings relating to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

Conclusion: The preponderance of the evidence supports a conclusion that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic on the public roads, provided that the recommended conditions of approval and the provisions of the Transportation Management Plan are fully implemented, including satisfaction of all requirements imposed by the State Highway Administration. As noted by Petitioner's traffic consultant, the area of the subject site is transitioning from a rural environment to a more urban one, and infrastructure improvements to accommodate pedestrians have not yet been constructed on most roadways. Moreover, very little pedestrian activity occurs: a total of only 12 pedestrians were observed in six hours of observations at each of the four locations in the traffic study area. See Ex. 14 at 20. The few pedestrians would benefit from the construction of a sidewalk, at least along Petitioner's frontage.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

Conclusion: No finding necessary.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Conclusion: The record substantiates a finding that Petitioner has met the burden of proof and persuasion.

59-G-1.23 General Development Standards

Pursuant to Section 59-G-1.23, each special exception must comply with the development standards of the applicable zone where the special exception is located, applicable parking requirements under Article 59-E, forest conservation requirements under Chapter 22A, and sign regulations under Article 59-F; must incorporate glare and spill light control devices to minimize glare and light trespass; and, in a residential zone, may not have lighting levels along the side and rear lot lines exceeding 0.1 foot candles.

Conclusion: As discussed in Part II.H. above, the proposed development would satisfy the applicable development standards of the R-200 Zone. The preponderance of the evidence supports a conclusion that the proposed parking would satisfy the requirements of Article 59-E and, with full implementation of the recommended conditions of approval, would be adequate for the use. Forest conservation requirements and sign regulations would be satisfied, and the lighting plan indicates that glare and spill light control devices would be employed. Lighting levels would be zero at the side and rear property lines.

VI. RECOMMENDATION

Based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2685, which requests a special exception under the R-200 Zone for a private educational institution, to be constructed on property located at 22821 and 22901 Frederick Road in Clarksburg, Maryland, be **granted** subject to the following conditions:

1. Petitioner shall be bound by all of the testimony of its witnesses and exhibits of record, including the Site Plan to be submitted per Condition No. 2 below, the Landscape Plan, Exhibit 57(g), and the Lighting Plan, Exhibit 57(f), and by the representations of counsel identified in this report.
2. Before the special exception may take effect, Petitioner must submit a revised Site Plan depicting privacy fencing along the property lines between the subject site and the adjacent McKenzie property. If Petitioner's intent is to provide fencing along the

entire perimeter of the site, as stated in the Statement of Operations, Exhibit 3, Petitioner shall depict such fencing on the revised Site Plan. The revised Site Plan shall include a legend identifying the meaning of each line type, including the line designating fencing.

3. Approval by the Planning Board of a preliminary plan of subdivision under Chapter 50 of the Montgomery County Code shall be required.
4. Enrollment shall be limited to 600 students during the academic year and 200 students during the summer program.
5. Classes shall take place Monday through Friday only. Hours of operation during the school year shall begin with student arrival starting no earlier than 7:30 a.m. and classes starting no earlier than 8:50 a.m. Classes shall end no later than 3:15 p.m., and final student departures shall take place by 6:00 p.m. Regularly scheduled outdoor play or exercise periods shall take place at separate times for each of the lower, middle and upper schools.
6. Hours of operation for the summer program shall be 9:00 a.m. to 3:00 p.m., Monday through Friday, from mid-June until early August.
7. The management of traffic and parking activities in connection with The Avalon School shall be carried out as set forth in these conditions of approval and in the submitted Transportation Management Plan ("TMP"), Exhibit 57(k), attached hereto as Appendix A. The TMP shall be fully implemented. In the event of a conflict between a condition of approval and a provision of the TMP, the condition imposed by the Board of Appeals shall take precedence. The TMP may be amended without modification of the special exception, except as to essential elements of the special exception such as maximum enrollment and number of staff, with the written consent of a majority of the non-school representatives on the Community Liaison Council required under Condition 23 below. Any such amendment shall be promptly

transmitted to the Board of Appeals, the Zoning Enforcement Division of the Department of Permitting Services, and the Development Review Division of the Maryland-National Capital Park & Planning Commission. The Board of Appeals reserves the right to review any changes to the TMP on its own initiative or for good cause shown. Such review may include a public hearing, at the Board of Appeals' discretion.

8. All student drop-offs and pick-ups shall occur on site. All measures necessary to prevent any portion of the drop-off or pick-up queue from standing in or blocking in any way the travel lanes of MD Route 355 shall be taken, including the measures outlined in the Transportation Management Plan and, if necessary, reducing enrollment to the point where traffic can be safely managed on site.
9. Trips to and from the site shall not exceed 420 during either the site's morning or afternoon peak periods. All measures necessary to accomplish this shall be taken, including the measures outlined in the Transportation Management Plan and, if necessary, reducing enrollment to the point where the number of peak hour trips drops below 420. To monitor compliance with this requirement, Petitioner shall carry out traffic counts for a minimum of three normal school days during the fall of each year that The Avalon School is in session at this location, starting when enrollment reaches 450 students. The results of these counts shall be timely provided to all members of the Community Liaison Council required by Condition 23 below, as well as to the Board of Appeals, the Zoning Enforcement Division of the Department of Permitting Services, and the Development Review Division of the Maryland-National Capital Park & Planning Commission. The results of these counts shall be provided to the Board of Appeals as part of the annual report required by Condition 24 below.
10. The Board of Appeals reserves jurisdiction to impose additional conditions related to traffic, including a lower cap on enrollment, if future evidence so warrants.

11. On-street parking in the vicinity of the subject site in connection with any activity of The Avalon School shall be prohibited at all times. All parking for regular school-day activities shall be limited to the parking spaces available on site. Parking permits for students and others shall be strictly controlled to ensure that the number of parking spaces available on site is sufficient to accommodate all vehicles driving to the site during the school day.
12. Parking for special events, i.e. events taking place outside the regular school day, shall be limited to the number of parking spaces available on site plus any off-site parking that The Avalon School arranges for those attending a special event. To the extent that parking privileges on the subject site are extended to the Lakewood Church of God located across MD 355 in exchange for permission for those attending events at The Avalon School to park on the church site, parking in connection with church activities shall be limited to once a month, and must take place during time periods when no activities are taking place at The Avalon School.
13. On each occasion when The Avalon School anticipates that a special event will attract more than 160 attendees, off-site parking arrangements shall be made at the Lakewood Church of God, Clarksburg High School, or other locations. On each occasion when the church parking lot across MD 355 is designated for overflow parking, The Avalon School shall provide either a crossing guard to assist pedestrians in crossing MD 355, if county regulations permit, or a van shuttle service between the church parking lot and the school site.
14. The Board of Appeals reserves jurisdiction to impose additional conditions related to parking, including a limit on the number or timing of special events, or a lower cap on enrollment, if future evidence so warrants.

15. Petitioner shall construct a five-foot-wide concrete sidewalk along the site's MD 355 frontage, and shall make a good-faith effort to obtain the right-of-way necessary to extend this sidewalk off-site to the intersection of MD 355 with Shawnee Lane.
16. Petitioner shall construct a lead-in sidewalk from MD 355 to each of the proposed driveways on the subject site.
17. Petitioner shall satisfy all requirements necessary to obtain access permits from the State Highway Administration, including (i) ensuring that both access points meet applicable sight distance requirements; (ii) restricting the site exit to right turns if required; (iii) constructing and providing the land necessary for a left-turn lane into the subject site from southbound MD 355; (iv) constructing deceleration and acceleration lanes into and out of the subject site; and (v) locating the entrance drive directly across MD 355 from the entrance to the Lakewood Church of God. In connection with the required deceleration and acceleration lanes, Petitioner shall make good-faith efforts to acquire the right-of-way necessary to construct these lanes to a length of 250 feet and a width of 16 feet. If these efforts are unsuccessful, Petitioner shall construct the deceleration and acceleration lanes to whatever dimensions are approved by the State Highway Administration.
18. All plantings shown on the Landscape Plan, Exhibit 57(g), shall be maintained in good condition and replaced if they die or reach the end of their useful lives. This requirement shall apply within the forest conservation area only to the extent such activity is permitted by the forest conservation easement.
19. The Avalon School may install one identification sign, within the size limits specified in the Zoning Ordinance, in the location and with the modest illumination shown on the Lighting Plan, Exhibit 57(f).
20. Site imperviousness must not exceed 28.7 percent. Any modification of the special exception that results in expansion of the school's facilities must be offset by

increasing contiguous land area so that impervious coverage does not exceed 28.7 percent.

21. Petitioner must satisfy the conditions stated in the Montgomery County Department of Permitting Services letter of March 1, 2007 granting conditional approval for the Preliminary Water Quality Plan prior to issuance of sediment control and/or building permit, as applicable, or at such earlier time as may be required by the Planning Board.
22. Petitioner must submit a Final Forest Conservation Plan that satisfies Section 109(B) of the Forest Conservation Regulations and is approved by the Planning Board prior to any clearing or grading on the property. The reforestation area at the rear of the property must be placed in a Category One forest conservation easement, to be recorded in the county land records. Site inspections by monitoring staff of the Maryland-National Capital Park & Planning Commission shall take place per Section 110 of the Forest Conservation Regulations.
23. Petitioner shall establish a Community Liaison Council ("CLC") to allow area residents to monitor the implementation of the Transportation Management Plan, and to establish a mechanism for residents to influence and shape the Plan should monitoring reveal that goals are not being met or conditions of this special exception are not being satisfied. The membership of the CLC shall consist of:
 - a. One to three representatives of the school administration.
 - b. One school parent or board member.
 - c. Any resident of an adjoining or confronting property who wishes to participate (an invitation to join the CLC shall be extended to all such residents at least 30 days before the first meeting).
 - d. A representative of a Clarksburg citizens' group such as the Clarksburg Citizens' Association.
 - e. A representative of the Planning Board.
 - f. The People's Counsel as *ex officio* member.

The CLC shall be organized and its first meeting conducted at least three months prior to commencement of construction, so that construction activities can be presented and discussed in advance of the start of work. The CLC shall meet at least three times per year for the first five years after its inception, and then at least annually unless and until the requirement for a CLC shall be deleted by the Board of Appeals. At least one meeting each year shall take place during the fall or early winter to discuss the results of the annual traffic counts.

24. Petitioner shall submit an annual report to the Board of Appeals during the fall season, which shall include, at a minimum, the results of the annual traffic counts required under Condition 9 above, minutes from each meeting of the CLC, a summary of implementation of the TMP during the previous 12 months, a description of concerns raised by community members during that period and a description of how The Avalon School responded to those concerns.
25. Petitioner shall water down the site on a regular basis during construction, to minimize dust, and shall clean the windows of the McKenzie home, using a method acceptable to Mr. and Mrs. McKenzie, once a month during construction.
26. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits or a use-and-occupancy permit, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: June 19, 2007

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner

APPENDIX A

TRANSPORTATION MANAGEMENT PLAN

THE AVALON SCHOOL

(Revised 11 May, 2007)

Introduction

The following document describes the transportation management strategies to be employed by The Avalon School in implementation of its proposal to operate an independent school of up to 600 students in the Clarksburg area of Montgomery County. Avalon recognizes that the opportunity to conduct school operations will bring with it an increased responsibility to actively manage traffic generated by its activities and to minimize this impact in conjunction with the traffic growth in the up-county area.

Background

The Avalon School opened with 102 students in grades 3 – 9 in 2003 in Rockville, Maryland in rented facilities from Montgomery County Schools. We have added a grade each year and now have 240 students in grades 3 – 12. Our current location is 7000 Radnor Rd., Bethesda, MD.

Avalon bought 10.3 acres in December 2005 on 22821 Frederick Rd. in Clarksburg, MD. We plan on building our campus and moving there in the fall of 2008.

Avalon currently employs 28 full-time faculty and staff and the County provides two maintenance men. The school day runs from 8:50 am to 3:15 pm. The doors officially open at 7:30 am and close at 6:00 pm. Sometimes operations and/or extracurricular activities extend from 3:15 pm to as late as 12:00 am.

In the new facilities, Staff and administration size will grow incrementally as enrollment increases. At maximum enrollment of 600 students, it is anticipated that there will be a total staff of 15 administrators and 50 full time or part time faculty members, with two or three visiting specialists (e.g., music, art, etc.) on a periodic basis.

The School will continue to operate from late August to early June with summer programs also provided. School will be open for early arrivals at 7:30 am with Classes commencing at 8:50 am. Classes end at 3:15 pm but after school activities may be conducted on campus until 6:00 pm.

The School anticipates that phase-in of enrollment up to a maximum of 600 students will take a number of years. Full enrollment is planned to occur by academic year August, 2011 – June, 2012.

The Transportation Management Plan will be essential to achieve the following primary objectives:

1. Manage the flow of traffic at the School's point of access and egress so that vehicular traffic movements are made in a safe and efficient manner without impeding the flow of traffic on Frederick Road;
2. Ensure that on-site queuing and circulation of vehicles on campus is conducted in an organized and efficient manner that supports the School's operations;
3. Reduce the volume of traffic, whenever possible, to and from the Avalon campus so as to support objectives 1 and 2 above and to minimize traffic on surrounding streets and roads; and
4. Maintain or improve the current number of students who commute by school van or carpool.

Summary of Management Plan

The Transportation Management Plan to support The Avalon School has three major components:

- (1) The minimization of vehicular traffic;
- (2) The management of vehicular traffic; and
- (3) The dispersal of traffic away from the peak hours of usage of Frederick Road.

The program to minimize vehicular traffic, both in terms of volume and during certain periods of the day, will include continued efforts to encourage carpooling, the use of school vans, the use of public bus service, and the restriction of vehicles that can be driven to the campus. The management of vehicular traffic will include programs to optimize the circulation and parking of vehicles; the use of traffic control measures; the supervision of campus traffic by staff members; and the education of persons commuting to and on The Avalon School campus. Finally, the program to disperse traffic away from peak hours of usage will include protocols that facilitate the scheduling of non-classroom instruction events or activities, including parent-teacher meetings, committee or board meetings, and alumni activities, on days and times outside of the School's peak hours of traffic flow. Each of these programs will be implemented from the commencement of operations of the new school.

Personnel

The Transportation Management Plan will be managed by a staff person who will be designated to act as Transportation Coordinator. This person will act as liaison with other persons and other divisions in the school to facilitate the programs described in this Plan. Examples of the persons and department with which the Coordinator will interact include (a) Building and Grounds staff; (b) Admissions office staff; (c) Avalon events coordinator; (d) parent groups; (e) van operators; (f) School Registrar; and (g) the Community Liaison Committee. The Transportation Coordinator may be the School's

representative to a Community Liaison Committee to be established in conjunction with the School's community outreach efforts. But, at a minimum, the Transportation Coordinator will be involved with the Committee and its deliberations. The activities of the office of Transportation Coordinator will be evaluated annually with primary emphasis on success in increasing the number of Avalon students riding in carpools or vans or public buses, and how to best achieve the school's stated goals.

Program

I. MINIMIZATION OF VEHICULAR TRAFFIC

A. Carpooling

1. The Transportation Coordinator will direct efforts to encourage, coordinate and maintain carpools.
2. The Transportation Coordinator will be authorized to undertake the following steps to encourage and support carpooling at Avalon.
 - a. Before the start of each academic year, Avalon will mail to parents of students a form requesting information on a student's travel patterns and the student's interest in opportunities to travel to school by public transportation, van, or carpools.
 - b. The information gathered from this mailing will then be collated by the Transportation Coordinator and will be sorted into geographical areas.
 - c. The Transportation Coordinator will use this information to create an area map for parent/student review showing the location of families in existing carpools or families interested in forming carpools.
 - d. In addition, as part of the parent orientation programs conducted during the school each year, the Transportation Coordinator will make presentations to the parents regarding the Transportation Management Plan, specifically the benefits of carpooling and taking vans. The Transportation Coordinator will stress the convenience factor and the benefits of traffic reduction.
 - e. The Transportation Coordinator will establish and maintain a carpool registry at the School so that carpool formation can be fostered during the entire school year or so that short-term carpooling arrangements can be made.

- f. Parents of students will be encouraged in literature and publications mailed by the School to organize carpools from the information provided by the coordinator, or to consult the coordinator for further assistance.
- g. The School will include carpool opportunities in:
 - (1) Correspondence periodically mailed by the School to the parents;
 - (2) The School's web site;
 - (3) The student handbook;
- h. The Transportation Coordinator will develop and the School will adopt incentives for families that carpool or take vans or use public transportation, including but not limited to:
 - (1) Parking privileges for special events that may otherwise require off-site parking will be provided on-site for such families;
 - (2) Priority seating and/or additional seats to graduation and potentially other activities.

B. Van or Bus Transportation

Avalon is dedicated to encouraging travel to School by van or by public bus.

1. Ride-On Transportation:

Ride-On bus #75 passes the Frederick Road campus. Therefore, the School will work with the Montgomery County Office of Transit Services to provide a bus stop near the campus.

2. Van transportation:

- a. Currently, Avalon operates an extensive program of private transportation connecting the School with various communities in upper Montgomery County. Approximately, 60% of our students use this service. Avalon has 2 vans at Milestone in Germantown, 2 vans at The Lake Lands in Gaithersburg, 2 vans at Rockville Library, 1 van at

Mother Seton in Germantown, 1 van at the Brookewood School in Kensington, 1 van at Glenmont Metro and 1 van at the Bethesda Metro (for students who use the metro). Teachers and staff drive the vans and take them home at night. The School will continue this program when the new school opens and will strive to expand the program as enrollment increases.

- b. The School will undertake the following programs to increase the number of riders in its van program:
- (1) Include in all School literature, on its web site, and in periodic mailings to parents, information about van service to the School;
 - (2) Continually assess how expanded van service can be employed as a recruitment tool and using such a program to attract new students from areas not historically represented within the Avalon student body or well-served by Avalon bus transportation;
 - (3) Establish and inform all parents of a regular morning and afternoon bus stop at Grosvenor Metro station, Shady Grove Metro station and Glenmont Metro station to further encourage and facilitate use of Metro rail by students;
 - (4) Offer Avalon families receiving financial aid a discount from van fees in order to make it affordable to all families;
 - (5) Each year, assess and modify as appropriate, van routes to make them convenient for each family;
 - (6) Offer the same preferential parking and other privileges to Avalon families using Avalon vans described above under carpooling; and

- (7) Avalon will work actively to expand its van service, with the understanding that it retains the right to modify or cancel any route that fails to attract enough students. The School's goal in allocating resources available for transportation will be to maximize the number of students employing carpools and vans to reach campus.
- c. It would not be realistic to anticipate that, at full enrollment of 600 students, the School will continue to provide bus transportation for 60% of the student body, which would require a van fleet (assuming the 14-person vans now in use) of 25 – 26 vehicles. However, the following van usage pattern is expected to occur:
- (1) For academic year September, 2008 – June, 2009, the School will not be able to relocate until mid-year so van transportation will stay at 60%± for the Fall semester. After the opening and relocation to the Clarksburg campus in early 2009, van transportation is expected to remain high as a mere extension of the commuting patterns already in place for that school year.
 - (2) For the academic year September, 2009 through June, 2010, the School hopes to increase enrollment to approximately 390 students. The current bus fleet will absorb some of those new students and additional vans may well be added based on interest and demand. However, the pattern of 60% usage will probably diminish due to (a) lack of necessity for van transportation options as the School locates closer to its target audience and (b) the unwieldiness of the School having to own, maintain and operate a larger fleet of vehicles.
 - (3) For the academic year September, 2010 through June, 2011, the enrollment is again projected to increase by approximately 15% to approximately 460 students. The van fleet will probably have reached its

maximum size (14 – 15 vehicles) by then, but by that date the new well-ensconced School expects to have an aggressive carpooling program in place that will effectively increase the per vehicle occupancy rates resulting in a practical limitation on trips to the School that approximate a 60% busing program, or close to it.

d. Vehicle limitations:

- (1) Limit the number of student vehicles on campus by restricting parking privileges. Currently, we allow sophomores, juniors, and seniors to drive personal automobiles to school. Limitations on the eligibility of students to drive to school will be included in the School's analysis to achieve its stated goals. Any restrictions could be managed via the sale and mandatory use of student parking tags;
- (2) Faculty and administration will be encouraged to share travel opportunities to and from school.

II. MANAGEMENT OF TRAFFIC AND PARKING

Avalon's one-way circulation system will make it easier to handle projected traffic loads. In addition:

- A. Avalon will utilize staff to actively manage the drop-off/pick-up queue each day to ensure traffic moves smoothly, efficiently, and safely. The staff members will minimize the length of the queue by actively directing parents to move forward as far as possible and to close any gaps between cars.
- B. If congestion occurs at the entrance or exit, the School will hire an off-duty Montgomery County policeman to facilitate the morning drop-offs or the afternoon pickups, or we will start the high school at 8:50am and the lower and middle school at 9:00am.
- C. If the length of the queue for drop-off or pick-up begins to approach the entrance from Route 355 so that cars may back up onto Route 355, the School will implement any, some or all of the following measures

to ensure that the queue does not extend into the right-of-way of Route 355:

1. Vehicles will be directed by School or contact personnel to tandem stack (that is, side-by-side) just long enough until the queue length disperses.
 2. The School will relocate the drop-off and pick-up point further along the main access driveway to create additional queue length.
 3. School personnel, or contact personnel (e.g., police officer), will monitor the entrance and will not allow any cars to enter the queue if it results in a car projecting into the through lanes of Route 355.
- D. The School will not allow the automobiles of students, families or visitors to be parked off-site on neighborhood residential streets.

III. DISPERSAL OF VEHICULAR TRAFFIC

There is much more activity on the Avalon campus than just classroom teaching. Avalon has numerous committees, groups and advisors whose trips could conflict with the normal pick-up and delivery of students. Accordingly, Avalon has developed the following protocols:

- A. Faculty and staff will be instructed to commute, whenever possible, outside of the hours of morning drop-off or afternoon pick-up.
- B. Parent-teacher meetings, when they must occur early in the morning or near the end of school, will be scheduled to take place outside of the School's peak hours of traffic flow (8:00 – 9:00am or 3:00 – 4:00 pm).
- C. Meetings of committees and boards will be scheduled whenever possible outside of the School's peak hours of traffic flow.
- D. Avalon events, such as alumni activities, will be scheduled whenever possible in the evening or on weekends.
- E. Avalon's events coordinator will ensure that activities will be scheduled so that they will minimize traffic movements during peak hours whenever possible.

Special Event and Auxiliary Use Traffic

In addition to daily school operations and athletic games, Avalon runs a number of special events each year that generate traffic to varying degrees. Avalon also permits a limited number of auxiliary uses during the school year that generate some traffic. Each type of event and auxiliary program is listed below, along with information about traffic levels and mitigation measures:

I. SPECIAL EVENTS

Among the many special events on The Avalon campus each year, only two – the Christmas party, and graduation in June – generate enough traffic to potentially cause off-campus traffic impacts. Both are held on Sundays. We will use off-campus parking for these events at Lakewood Church of God (across the street), with whom we have reached an agreement, or with Clarksburg High School. Clarksburg High School is less than a quarter-mile from Avalon and would be an easy shuttle for us. Avalon staff are deployed at both of these events each year to keep traffic moving smoothly on-campus and prevent off-campus traffic impacts.

Other recurring special events (not including scheduled athletic games) on campus include:

<u>EVENT</u>	<u>DATE</u>	<u>FREQUENCY (Per Year)</u>	<u># OF PERSONS</u>
Chesterton Lecture Series	Weekday/Evenings	4 times	70 – 100
Back-to-School Nights	Weekdays/Evenings	4 times	150 – 200
Halloween Party	Weekend/Evenings	1 time	150 – 200
College Counseling	Weekday/Evening	2 times	30 – 50
Admissions Open House	Weekend/Day	1 time	150 – 250
Report Card Days	Weekday/Day	3 times	200 – 250
Maryland Day	March 25	1 time	150 – 250

None of these events generates traffic that requires active traffic management in order to prevent off-campus traffic impacts or on-campus bottlenecks. Even at 600 students, these events are easily managed with the measures described earlier. Because the events are generally “family oriented”, a higher than normal vehicle occupant load has been observed and is anticipated to continue at the new campus. Therefore, the parking spaces on campus are expected to be adequate to accept the maximum number of attendees (250 persons) for such an event. If any recurring event grows to the point of threatening off-campus bottlenecks and slowdowns despite intensive traffic management measures, Avalon will modify the event itself to reduce traffic volume and will engage staff to ensure that queues do not extend onto Maryland Route 355.

II. SUMMER PROGRAMS

Avalon conducts a popular series of summer programs with both academic and recreational components. The summer program will be operated from mid-June to mid-August. Activities will be conducted on Mondays through Fridays from 9:00 am to 3:00 pm. Some activities will be conducted off-site with transportation provided by the School to the destination(s). Total enrollment at any time will not exceed 200 boys; staffing will vary based on the age of the children and the subject of concentration for that session but will not exceed seventy (70) total employees.

Traffic management measures already in place for summer programs include:

1. Staggered starting and ending times for different programs, to spread traffic arrivals and departures over time sufficiently to reduce on-campus traffic congestion and prevent off-campus traffic impacts;
2. Stationing of summer program personnel at each drop-off/pick-up point to facilitate the flow of traffic around those points;

Experience indicates that the present measures to organize, stack and circulate vehicles on the campus during the summer sessions can easily accommodate a substantially larger enrollment without any adverse impact on campus circulation or off-site congestion. However, if the traffic generated by an increased summer enrollment begins to approach the level that could cause off-campus back-ups or congestion, Avalon will take necessary measures including limiting enrollment to the number that experience shows can be adequately managed with the measures described above.

The multiple measures currently in use and available for future use, combined with the set up of the Avalon campus and the number of personnel on-hand to help manage traffic, allows Avalon to confidently promise the County that any future growth that may occur in summer programs can and will be managed in a way that does not increase off-site congestion around the entrance and exit from campus. The fact that Avalon summer programs traffic occurs outside the peak rush hours for commuting traffic makes it unlikely that any future growth in Avalon summer programs will have an adverse impact on traffic levels at local intersections.

Community Liaison Committee

1. The Petitioner will organize and involve itself with a group to be called the "Avalon School Community Liaison Committee ("CLC"). The purpose of the CLC is to periodically meet to discuss matters of mutual interest between the School and the surrounding neighborhood and larger community.

2. The CLC will be composed of, at a minimum, the following:
 - A. School administration representative.
 - B. Representative of the McKenzie family as long as it owns the adjacent property
 - C. Representative from the adjoining residential neighborhood.
 - D. Representative from a Clarksburg community organization such as the Clarksburg Citizens' Association.
 - E. School parent or board member.
 - F. The People's Counsel shall be an ex officio member of the Committee.
3. The CLC shall be organized and its first meeting shall be conducted, prior to commencement of construction so that construction activities can be presented and discussed in advance of work actually commencing on the project.
4. The CLC shall meet at least twice per year for the first five years after its composition and then at least annually unless and until the requirement for the CLC to exist and to meet is deleted by the Board of Appeals.

Summary

The foregoing Transportation Management Plan is intended to mitigate the potential impacts a growing Avalon might have on local traffic loads and flow, as well as to improve access and circulation on the Avalon campus for the benefits of the members of the Avalon community, its neighbors and the general traveling public. Through this multifaceted plan, based on Avalon's strength in van transportation resources and carpooling and some accessibility via public transportation, Avalon intends to manage its growth in a manner that will avoid vehicular congestion within the campus and on the surrounding transportation network.